TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, [redacted] 1927

No. [redacted] 176

ATLANTIC COAST LINE RAILROAD COMPANY, PETITIONER,

vs.

STANDARD OIL COMPANY OF KENTUCKY

No. [redacted] 177

STANDARD OIL COMPANY, INCORPORATED IN KENTUCKY, PETITIONER,

vs.

ATLANTIC COAST LINE RAILROAD COMPANY

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITIONS FOR CERTIORARI FILED FEBRUARY 2, 1927

WRITS GRANTED MARCH 21, 1927

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(32,439, 32,440)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1926

No. 872

ATLANTIC COAST LINE RAILROAD COMPANY, PETITIONER,

vs.

STANDARD OIL COMPANY OF KENTUCKY

No. 873

STANDARD OIL COMPANY, INCORPORATED IN KENTUCKY, PETITIONER,

vs.

ATLANTIC COAST LINE RAILROAD COMPANY

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

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[fol. a]

IN SUPREME COURT OF THE UNITED STATES

October Term, 1926

No. —

The Atlantic Coast Line Railroad Company, Petitioner,

vs.

Standard Oil Company, a Corporation of Kentucky, Respondent

On Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit

Thos. W. Davis, Wilmington, Del., Helm Bruce, 1710 Inter Southern Building, Louisville, Ky., Attorneys for Petitioner,

Charles G. Middleton, Inter Southern Building Louisville, Ky., Attorney for Respondent

Transcript of Record

[fol. 1] In United States District Court for the Western District of Kentucky

Standard Oil Company, a Corporation of Kentucky, Complainant,

vs.

The Atlantic Coast Line Railroad Company, a Corporation of Virginia, Defendant

Bill of Complaint—Filed July 12, 1926

To the Judge of the United States District Court for the Western District of Kentucky, sitting in equity:

Your complainant, the Standard Oil Company, brings this its bill of complaint against the Atlantic Coast Line Railroad Company, a corporation of Virginia, for the purpose of obtaining a preliminary injunction and a perma-

nent decree and injunction restraining and forbidding the defendant from charging the complainant herein for the transportation of gasoline, refined oil, lubricating oil and other products of petroleum from the cities of Port Tampa, Tampa and Jacksonville, all being in the State of Florida, to other points in the State of Florida, over and by intrastate routes, any rate or rates of freight other than the lawfully established intrastate rates for such commodities.

The complainant states:

First. That the complainant is a corporation organized under and existing by virtue of the laws of the State of Kentucky and is a citizen of said State and of the Western District of Kentucky, within the meaning of the provisions of the Judicial Code prescribing the jurisdiction of this Honorable Court, having its home office and principal place of business in said State and District, at Louisville.

Second. That the defendant is a corporation organized under and existing by virtue of the laws of the State of Virginia and is a citizen of the State of Virginia within the [fol. 2] meaning and contemplation of the statutes prescribing the jurisdiction of this Honorable Court; that the defendant is engaged in the business of operating a railroad in various states of the Union, including the State of Florida, and is also authorized to do business and is engaged in the doing of business in the State of Kentucky, and has designated an agent for the service of process therein.

Third. That the amount involved in this suit exceeds the sum of $3,000, exclusive of interest and costs, and that the jurisdiction of this Court is invoked by the complainant on the ground of diversity of citizenship, the complainant being a citizen and resident of Kentucky and the defendant being a citizen and resident of Virginia and the subject matter involving more than $3,000.

Fourth. That the complainant is a corporation engaged in the business of buying and selling gasoline, refined oil, lubricating oil and other petroleum products and is engaged in such business in the State of Kentucky and in the State of Florida and has been so engaged for many years past; that it maintains in the State of Florida and in the cities of Port Tampa, Tampa and Jacksonville,

in said State, very large storage facilities hereinafter more particularly described; that said storage facilities consist of tanks, large and small, and warehouses for the purpose of receiving and storing gasoline, refined oil and other petroleum products, and that from said storage tanks and warehouses the complainant supplies its customers throughout the State of Florida, in the manner hereinafter more particularly described; that the complainant purchases all of the gasoline, refined oil, lubricating oil and other petroleum products, which it sells to its customers in the State of Florida, and that, with the exception of a small percentage of its purchases hereinafter mentioned, all of its said purchases of said petroleum products are brought into Port Tampa and Jacksonville in steamers owned or chartered by the sellers, and said gasoline and other petroleum products are pumped from said steamers through pipe lines into the storage tanks of the complainant at Port Tampa and at Jacksonville, Florida; that all of said gasoline and other petroleum products are purchased by the complainant delivered into the complainant's tanks at said points, and none of said gasoline or other petroleum products becomes the property of the complainant herein until delivered as aforesaid into the complainant's tanks. Complainant states that said gasoline and other petroleum products mentioned come to rest in its [fol. 3] tanks at the points hereinabove mentioned and from said points the complainant supplies its trade throughout the State of Florida; that the method of doing business and of supplying its Florida trade from the several points mentioned varies somewhat at the points mentioned and with the different kinds of petroleum products sold, a particular description of the complainant's business and of each product being as follows:

(a) Port Tampa—Gasoline. The complainant maintains at Port Tampa for the storage of gasoline five storage tanks of a total capacity of approximately 110,000 barrels, an average capacity for each tank of 22,000 barrels. All gasoline purchased by the complainant for delivery into storage tanks at Port Tampa moves in ships owned or chartered by the sellers, and the delivery to the complainant takes place when said gasoline is pumped through pipe lines into the complainant's storage tanks.

The said gasoline remains in the complainant's storage tanks at Port Tampa for several months, the exact time depending entirely upon business conditions and demands in that section of Florida supplied from Port Tampa, but, under ordinary and usual business conditions, the complainant has on hand at Port Tampa sufficient gasoline to take care of its requirements of from forty-five to sixty days, and the complainant pays local taxes to the State of Florida on all said gasoline on hand on the Florida assessing days. No gasoline coming into Port Tampa is sold before such gasoline becomes the property of the complainant, when, as hereinabove set forth, it is delivered into the complainant's storage tanks at said port.

The complainant maintains at a number of other points in the State of Florida bulk stations where it has sufficient tankage and storage to meet the immediate needs of each of said bulk stations. The complainant ships its gasoline in tank cars from Port Tampa to these various bulk stations from which it is delivered by tank wagon to complainant's customers in the State of Florida. The complainant also maintains a number of service stations in the State of Florida, and occasionally a service station is supplied with gasoline in tank cars shipped directly from Port Tampa, but, in the usual course of business, service stations are supplied directly from bulk stations. Also a large number of complainant's customers are supplied by tank wagons directly from bulk stations.

[fol. 4] The complainant ships no gasoline from Port Tampa to points other than those in the State of Florida. The complainant does not know when it receives and accepts said gasoline in its storage tanks at Port Tampa where the said gasoline will eventually go or to whom it will be sold, except that it knows that it will go to some place and will be sold to some one in the State of Florida, but the exact disposition of the gasoline depends entirely on the requirements of the bulk stations supplied from Port Tampa and the demands of its customers at those points.

(b) Port Tampa—Refined Oil.—The complainant states that the common name for refined oil here mentioned is kerosene; states that it maintains at Port Tampa two storage tanks of approximately 20,000 barrels capacity, or

an average capacity of 10,000 barrels each; that refined oil is received by the complainant herein at Port Tampa and sold from said point in exactly the same manner as gasoline is received and sold, and the facts, as stated above, in regard to gasoline apply equally to refined oil.

(c) Port Tampa—Lubricating Oils.—The complainant states that the lubricating oils received by it at Port Tampa are purchased by it and delivered by the sellers in vessels chartered or owned by the sellers, and said lubricating oils do not become the property of the complainant herein until pumped from said vessels into tank cars leased by the complainant. After said lubricating oils are pumped from the steamers to the tank cars, the tank cars are switched to Tampa, where the lubricating oils are pumped from the tank cars into storage tanks belonging to the complainant and from which storage tanks the complainant supplies its Florida lubricating oil business by tank wagon, or in barrels, or in smaller containers, according to demands of customers. A small percentage of lubricating oil does not move to Tampa from Port Tampa but is shipped directly from Port Tampa to the complainant's bulk stations, where it is pumped from the tank cars into complainant's storage tanks at said bulk stations. Except as indicated, lubricating oils are handled from Port Tampa in exactly the same way as gasoline is handled.

(d) Port Tampa—Fuel Oil.—The complainant maintains at Port Tampa seven tanks for fuel oil, with a total capacity of 127,000 barrels, or an average capacity of about 18,000 barrels to each tank. The fuel oil is purchased by the complainant and is shipped to Port Tampa from points outside of the State of Florida in tank steamers belonging [fol. 5] to or chartered by the sellers, and said fuel oil becomes the property of the complainant herein as and when the same is pumped from the tank steamers into complainant's storage tanks at Port Tampa. All of said fuel oil is sold by the complainant within the boundaries of the State of Florida. Approximately ninety-five per cent of said fuel oil is sold to customers in Florida on contracts made before the fuel oil comes to rest at Port Tampa. Practically all contracts made by the complainant with its customers for the sale of fuel oil are made for one year, although a few of them are made for shorter periods.

About five per cent of the fuel oil sold by the complainant in Florida is sold currently and not on contracts previously made. The complainant, however, maintains at Port Tampa approximately thirty to sixty days' supply of fuel oil, and there is no separation of the fuel oil under contract from that not under contract in the complainant's storage tanks at Port Tampa. All of said fuel oil is of the same grade and none of it is allocated to any particular contract. All of said oil is stored in the complainant's tanks in bulk and is distributed to various points as needed, the distribution takes place according to the demands of the complainant's customers, which vary from time to time, and the actual deliveries are irregular as to time and amount, so that the complainant cannot say where any particular cargo of fuel oil which is pumped from the vessels into its tanks at Port Tampa will go or to whom it will go. Port Tampa is a large storage point for fuel oil, and when the complainant purchases fuel oil to be delivered to it at Port Tampa, the only destination which the complainant can give is Port Tampa.

(e) Jacksonville—Gasoline.—The complainant maintains at St. Johns River, Jacksonville, Florida, large storage facilities for gasoline, its total tankage capacity for said product at said point being five tanks with a total capacity of 105,000 barrels, or an average capacity of 21,000 barrels each; that gasoline is received, by the complainant at Jacksonville exactly as gasoline is received by the complainant at Port Tampa and is sold from Jacksonville in exactly the same way, except that approximately thirty per cent of its gasoline received at Jacksonville is used to supply points in Georgia and Alabama, and seventy per cent is used to supply points in Florida only.

(f) Jacksonville—Refined Oil.—Refined oil purchased by the complainant and received at Jacksonville is handled [fol. 6] and sold in exactly the same way as that received at Port Tampa, except that approximately twenty-eight per cent of the refined oil purchased and received at Jacksonville is used to supply Georgia and Alabama business.

(g) Jacksonville—Fuel Oil.—The fuel oil purchased by the complainant and received at Jacksonville is sold and handled in exactly the same way as that received at Port

Tampa, except that an occasional shipment of fuel oil moves from Jacksonville into Georgia.

(i) Jacksonville—Lubricating Oil.—The complainant purchases and receives lubricating oil by tank steamer at Jacksonville, and said lubricating oils are pumped from the steamers into tank cars leased by the complaint, all of which is then transported in tank cars a distance of about two miles across the City of Jacksonville to complainant's bulk station located at a point known as King's Road, in the City of Jacksonville, and there pumped into storage tanks of the complainant, there being 19 storage tanks maintained for lubricating oil at said point. In addition to lubricating oil that comes to Jacksonville in tank steamers, some lubricating oil comes in tank cars from Eastern refineries, but all of said lubricating oil at Jacksonville is concentrated in the complainant's tanks at King's Road, and there the complainant maintains a supply of approximately sixty to ninety days. About ninety per cent of the lubricating oil at King's Road is barrelled by the complainant at said point and is delivered to various customers throughout the State of Florida in said barrels; that some barrel stations in Georgia and Alabama are supplied with lubricating oil through the Jacksonville station. About ten per cent of the lubricating oil at Jacksonville is used locally or occasionally leaves Jacksonville in tank cars for points in Southern Florida. Occasionally, complainant receives at Jacksonville lubricating oil in barrels or in cases and also some greases in cases and in barrels, all of which, however, is stored at King's Road to await orders in varying amounts from customers.

Complainant states that it owns no tank cars; that it leases the tank cars which it needs either from tank car line companies or from the railroads; that it ships only carload lots from Port Tampa, but that from Jacksonville it ships both full carload lots and less than car load lots.

Fifth. Complainant states that it is now carrying on its business in the State of Florida as hereinabove indicated and has been so carrying on its business in said State for [fol. 7] a number of years: that, with the exceptions noted, all of said business is intrastate business and complainant states that it is entitled to transportation over the de-

fendant's lines of railroad and those of other railroads upon the payment of intrastate rates prescribed or lawfully on file with the Railroad Commission of the State of Florida; that the defendant, up until June 15, 1923, recognized that the complainant's business was intrastate business and applied the intrastate rates applicable between Port Tampa, Tampa, Jacksonville and other points in Florida to the complainant's shipments, both in carload lots and in less than carload lots, and that said intrastate rates were applied by the defendant for many years prior to June 15, 1923. Complainant states, however, that, on June 15, 1923, and at all times since said date, the defendant has refused to accept shipments of the complainant herein from Port Tampa, Tampa and Jacksonville, Florida, to other points within the State of Florida at intrastate rates and has compelled the complainant herein to pay interstate rates for the transportation of shipments, and the complainant has paid all of the same under protest. Complainant states that the interstate rates which the defendant is applying to all of the complainant's shipments from the points named to other points in Florida are higher than the intrastate rates, and the complainant herein has remonstrated and objected to the application of such higher interstate rates, but that the defendant has paid and continues to pay no attention to the remonstrances and objections of the complainant. Complainant states that its methods of doing business in Florida prior to June 15, 1923, were exactly the same as those in use by it since said date, and this complainant states that there is and was no reason for the defendant to change from the intrastate rates which it formerly applied to the business of the complainant within the State of Florida to the interstate rates which it now compels the complainant to pay.

Sixth. Complainant alleges that the shipment of all of its products from Tampa, Port Tampa and Jacksonville, Florida, to other points within the State of Florida is intrastate business and the complainant is entitled to have the lawful intrastate rate applied to said shipments; that the conduct and demands of the defendant herein are and have been since June 15, 1923, wrongful and oppressive and in disregard of the complainant's rights and are not

only unauthorized in law but are in direct defiance of the [fol. 8] law. Complainant states that, if the defendant is not enjoined by this Honorable Court from enforcing other than the lawful intrastate rates, it will work irreparable harm to the complainant, and that the complainant herein is without remedy, unless this Honorable Court will issue an injunction enjoining the defendant from the wrongful acts herein complained of; that it has no other adequate remedy, except that afforded by a court of equity; that, if the complainant is compelled to pay the interstate rates upon all of its intrastate shipments within the boundaries of the State of Florida, it will be compelled to pay the said higher rates under protest and then will be compelled to bring a great number of actions against the defendant herein to the great annoyance and expense of the complainant and the defendant. Complainant states that, according to its records, it has already overpaid to the defendant herein between the dates of June 15, 1923, and April 17, 1925, the sum of $63,000. Complainant states that a decree of this Honorable Court sitting in equity can adjust all the matters in controversy between the complainant and defendant; that said decree can adjudicate and finally determine whether or not, under the circumstances as hereinabove set forth, the shipments of the products of the complainant herein within the State of Florida constitute intrastate business entitled to be transported at the intrastate rates, or whether said shipments constitute interstate commerce compelled to pay the interstate rates.

Wherefore, your complainant prays as follows:

(1) That a writ of subpœna be issued and directed to the defendant, commanding it upon a certain day and under penalty personally to appear before this Honorable Court and then and there make full, true and direct answer, but not under oath, answering under oath being expressly waived, to the bill of complaint herein, and to perform and abide by all the orders and decrees that may be made against it by this Honorable Court.

(2) That a temporary injunction and restraining order be issued by this Honorable Court against the defendant, enjoining and restraining and forbidding the said defend-

ant herein from charging the complainant or imposing upon it for the transportation of its products between Port Tampa, Tampa and Jacksonville, all in the State of Florida, to other points within the State of Florida, over routes lying wholly within the State of Florida, rates other than or higher than its lawfully published rates for the trans- [fol. 9] portation in intrastate commerce of such products within the State of Florida.

(3) That a perpetual injunction and restraining order be issued by this Honorable Court against the defendant, enjoining and restraining and forbidding the said defendant herein from charging the complainant or imposing upon it for the transportation of its products between Port Tampa, Tampa and Jacksonville, all in the State of Florida, to other points within the State of Florida, over routes lying wholly within the State of Florida, rates other than or higher than its lawfully published rates for the transportation in intrastate commerce of such products within the State of Florida.

(4) That, if, upon the final hearing of said case, this Honorable Court decides that the products of the complainant herein should be carried between points within the State of Florida over intrastate routes at the intrastate rates, that the case be referred to a Special Master for the purpose of having said Special Master hear and determine the overcharges which the complainant has been compelled to pay the defendant since June 15, 1923; that a judgment be thereupon entered in favor of the complainant and against the defendant for each of said overcharges with interest thereon at six per cent from the date the same were accepted by the defendant herein until paid.

(5) That a restraining order and injunction, temporary or perpetual, be directed against the defendant and all of its officers and agents.

(6) Complainant prays further for its costs in this behalf expended and for such other and further relief as may seem just and proper and necessary to this Court in the premises, and your complainant will ever pray.

Humphrey, Crawford & Middleton, Chas. G. Middleton, Attorneys for Complainant.

Duly sworn to by Arthur M. Stephens. Jurat omitted in printing.

[fol. 10] In United States District Court

Motion for Preliminary Injunction—July 7, 1925

The complainant, Standard Oil Company, moves the Court for a preliminary injunction, enjoining and restraining the defendant herein from charging the complainant or imposing upon it for the trasportation of its products between Port Tampa, Tampa and Jacksonville, all in the State of Florida, and other points within the State of Florida, over routes lying wholly within the State of Florida, rates other than or higher than its lawfully published rates for the transportation in intrastate commerce of such products within the State of Florida.

Chas. G. Middleton, Attorneys for Complainant.

[fol. 11] In United States District Court

Motion to Dismiss—July 7, 1925

Defendant moves the Court to dismiss the bill of complaint herein for insufficiency of fact to constitute a valid cause of action in equity; and among other grounds for said motion says plaintiff has a plain, adequate remedy at law for the alleged wrongs complained of herein by it.

Thos. W. Davis, Bruce, Bullitt, Gordon & Laurent, Attorneys for Defendant.

In United States District Court

Submission of Motions—July 7, 1925

This day appeared the complainant and filed a notice of motion for a preliminary injunction, duly served upon the defendant, and moved the Court for a preliminary injunction in accordance with the prayer of its Bill of Complaint herein.

The defendant appeared by counsel and objected to said motion for a preliminary injunction and also moved the Court to dismiss the Bill of Complaint herein. The defendant filed, to be read upon the hearing of the motion for an injunction, the affidavits of W. R. Pittman, Supplemental affidavit of W. R. Pittman, F. L. Glover, J. W. Morris, supplemental affidavit of F. L. Glover, V. E. Phelps, supplemental affidavit of J. W. Morris and extract from annual report of the Railroad Commission of Florida.

The plaintiff filed, to be read upon said hearing, the affidavit of Arthur M. Stephens.

The motion for a preliminary injunction and the motion to dismiss the Bill were argued by counsel for the respective parties and the Court not being sufficiently advised, it is ordered that said motions be submitted, with leave to the plaintiff to file its brief within one week and to the defendant to file its brief within one week thereafter.

[fol. 12] In United States District Court

Order Overruling Motions for Preliminary Injunction and to Dismiss—January 5, 1926

This day came the parties hereto and the Court being sufficiently advised, upon the pending motion, it is now considered, ordered and adjudged by the Court—

1. That plaintiff's motion for a preliminary injunction herein be and it is overruled to which plaintiff excepts, and—

2. The defendant's motion to dismiss bill of complaint for want of equity, be and it is overruled, to which defendant objects.

In United States District Court

Answer—Filed Jan'y 25, 1926

Defendant, Atlantic Coast Line Railroad Company, hereby makes answer to the bill of complaint herein, and,

while speaking in terms of the present, speaks as of the times referred to in the bill. It says:

1. The allegations of Paragraph 1 of the bill are admitted.

2. The allegations of Paragraph 2 of the bill are admitted.

3. The allegations of Paragraph 3 of the bill are admitted.

4. Defendant is without knowledge as to whether or not complainant purchases all of the gasoline, refined oil, lubricating oil or other petroleum products which it sells to customers in Fliroda, or as to whether or not, with the exception of a small percentage of its purchases, all of its purchases of said petroleum products are brought into Port Tampa or Jacksonville in steamers owned or chartered by the sellers. It denies that all of complainant's petroleum products are pumped from steamers into storage tanks.

Defendant is without knowledge as to whether or not all of said gasoline or other petroleum products are purchased [fol. 13] by complainant delivered into complainant's tanks; or as to whether or not none of said gasoline or other petroleum products becomes the property of complainant until delivered into complainant's tanks. It denies that said gasoline or other petroleum products comes to rest in complainant's tanks at points mentioned in the bill of complaint, or that it is from said points that complainant supplies its trade throughout the State of Florida.

a. Port Tampa—Gasoline.—Defendant is without knowledge as to whether or not all gasoline purchased by complainant for delivery into storage tanks at Port Tampa moves in ships owned or chartered by the sellers, or that the delivery to the complainant takes place when said gasoline is pumped through pipe lines into complainant's storage tanks. It denies that said gasoline remains in complainant's storage tanks at Port Tampa for several months, or at any time more than two months. It is without knowledge as to whether or not complainant pays local taxes to the State of Florida on all or any of its gasoline; or as to whether or not no gasoline coming into Port Tampa is sold before such gasoline becomes the property of the complain-

ant, or before it is delivered into complainant's storage tanks at Port Tampa.

Defendant is without knowledge as to whether or not complainant knows when it receives and accepts gasoline in storage tanks at Port Tampa where the said gasoline will eventually go or to whom it will be sold.

b. Port Tampa—Refined Oil.—Complainant having alleged in its bill of complaint that the refined oil is received by complainant at Port Tampa and sold from said point in exactly the same manner as gasoline is received and sold, and that the facts as stated in its bill of complaint with reference to gasoline apply equally to refined oil, defendant hereby adopts and applies to these allegations as to refined oil its allegations and denials above as to gasoline.

c. Port Tampa—Lubricating Oils.—Defendant is without knowledge as to whether or not the lubricating oils received by complainant at Port Tampa are purchased by it or delivered by the sellers in vessels chartered or owned by the sellers; or as to whether or not said lubricating oils do not become the property of the complainant until pumped from said vessels into tank cars. It is without knowledge as to how complainant handles its Florida lubricating oil business. So far as complainant adopts as to lubricating [fol. 14] oils the allegations of its bill as to gasoline, defendant adopts as its answer thereto the allegations and denials of its answer as to gasoline.

d. Port Tampa—Fuel Oil.—Defendant is without knowledge as to whether or not the fuel oil is purchased by complainant, or is shipped to Port Tampa from points outside of the State of Florida in tank steamers belonging to or chartered by the sellers; or as to whether or not said fuel oil becomes the property of complainant only as and when the same is pumped from tank steamers into storage tanks at Port Tampa; or as to whether or not all of said fuel oil is sold by complainant within the boundaries of Florida; or as to whether or not complainant can say where any particular cargo of fuel oil, which is pumped from vessels into its tanks at Port Tampa, will go, or to whom it will go; or as to whether or not when complainant purchases fuel oil to be delivered at Port Tampa, the only destination which the complainant can give is Port Tampa.

e. Jacksonville—Gasoline.—Complainant having adopted as to its handling of gasoline at Jacksonville the allegations of the bill of complaint as to the handling of gasoline at Port Tampa, defendant adopts as to the handling of the gasoline at Jacksonville its answer as to the handling of gasoline at Port Tampa.

f. Jacksonville—Refined Oil.—Complainant having adopted as to the handling of refined oil at Jacksonville the allegations of the bill of complaint as to handling refined oil at Port Tampa, defendant adopts as to the handling of refined oil at Jacksonville its answer as to the handling of same at Port Tampa.

g. Jacksonville—Fuel Oil.—Complainant having adopted as to the handling of fuel oil at Jacksonville the allegations of its complaint as to the handling of fuel oil at Port Tampa, defendant adopts as to the handling of fuel oil at Jacksonville its answer as to the handling of fuel oil at Port Tampa.

h. Jacksonville—Lubricating Oil.—Defendant is without knowledge as to how complainant acquires or handles lubricating oil received by it at Jacksonville, or as to what supply of lubricating oil it maintains at Jacksonville; or as to what per cent of the lubricating oil at Jacksonville is barreled by complainant and delivered to customers throughout the State of Florida in barrels; or as to what proportion of said lubricating oil is used locally at Jacksonville or leaves there in tank cars.
[Vol. 15] Defendant is without knowledge as to whether or not complainant owns any tank cars, or as to whether or not it leases the tank cars it needs.

5. Defendant denies that with the exceptions noted in the bill of complaint, all or any of the business referred to in the bill of complaint is intrastate business, or that complainant is entitled to transportation over defendant's lines of railroad, or those of other railroads, upon the payment of intrastate rates.

It denies that up until June 15, 1923, it recognized that complainant's business was intrastate business, or applied intrastate rates as to all of said business of the character referred to in the bill of complaint, although it admits that such intrastate rates were applied until that date on some

of complainant's business of the character referred to in the bill of complaint. The facts as to that situation will be hereinafter stated.

It denies that there is or was no reason for defendant to change from intrastate rates to interstate rates on June 15, 1923, so far as such change was made.

6. It denies that the shipment of all or any of the products referred to in the bill of complaint is intrastate business, or that complainant is entitled to have intrastate rates applied to any of said shipments; or that the conduct and demands of defendant referred to in the bill of complaint are or have been or that any of them have been, since June 15, 1923, wrongful or oppressive or in disregard of complainant's rights, or unauthorized in law or in defiance of law; or that the enforcing of the rates which it is enforcing and has been enforcing will work irreparable or any harm to complainant; or that complainant is without remedy if this Court should refuse the injunction prayed for in the bill of complaint; or that complainant has no other adequate remedy except that afforded by a Court of equity; or that complainant will in any event be compelled to bring a great number of actions against defendant if complainant is compelled to pay the interstate rates complained of.

Facts Stated Affirmatively

7. The following are the facts concerning complainant's methods of handling the business referred to in its bill of complaint. The statements hereinafter made as to these methods, although made in the present tense, are true as to all the time covered by the bill of complaint.

[fol. 16] Complainant is in the business of supplying petroleum products to consumers thereof in the interior of Florida. All of these products are acquired by complainant outside of the State of Florida; and it is known when they start in transportation from their points of origin that they are destined to be transported, not to the boundary only, or the coast line only, of the State of Florida, but to points within the interior of said State, subject only to such stoppages in transit as convenience and the necessity of change from water transportation to rail transportation may dictate and require. Complainant's methods of handling the

different kinds of petroleum products differ somewhat from each other and, for clarity, will be stated separately.

a. Port Tampa—Gasoline.—Complainant acquires its gasoline at points outside of Florida, such as in Mexico, Texas and Louisiana, and the same is transported by water from the States of its origin to Port Tampa on the west coast of Florida in tank steamers. Whether these tank steamers belong to or are leased by complainant, defendant is not able to say, because it does not know. But none of this gasoline is intended to be used, or is used, at Port Tampa. It is known when the gasoline starts from its point of origin that it is going on through Port Tampa to other points in the interior of Florida.

At Port Tampa complainant has certain receiving tanks for gasoline. These tanks have a capacity for holding about twice as much gasoline as is necessary to accommodate complainant's average monthly business—in other words, said tanks are capable of holding about twice as much gasoline as complainant sends by rail on an average each month from Port Tampa to points in the interior of Florida.

Complainant also has what it calls "bulk stations" for the storage of gasoline in the interior of Florida at various points, from which bulk stations it supplies gasoline to its customers in Florida, the capacity of the several bulk stations being sufficient to supply the needs of the territory surrounding the bulk stations. It also has certain filling stations, from which persons traveling in automobiles are directly supplied, and which filling stations are in turn supplied from the bulk stations.

When gasoline is brought by tank steamer to Port Tampa, it is first pumped from the steamer into the receiving tanks at Port Tampa, and thence pumped into tank cars on defendant's rails, which carry said gasoline on to complainant's bulk stations in the interior of the State of [fol. 17] Florida, from which stations it is distributed to complainant's customers in the neighborhood of such stations. And thus there is a continuous stream of said gasoline from its point of origin outside of Florida to and through Port Tampa, where the stream divides into smaller

streams, and thus the gasoline proceeds on to complainant's bulk stations in the interior of Florida, and in this way there is continuous transportation of such gasoline from its point of origin outside of Florida to complainant's bulk stations in the interior of Florida; and it is known to complainant and to those from whom it acquires said gasoline at the time the same starts from its point of origin outside of Florida that such is to be the course of its transportation and its destination; and the commerce therein is interstate commerce until the gasoline reaches at least the aforesaid bulk stations in the interior of said State.

b. Port Tampa—Refined Oil.—Complainant's method of handling refined oil through Port Tampa is the same as its method heretofore described of handling gasoline.

c. Port Tampa—Lubricating Oils.—Complainant has no receiving tanks for lubricating oils at Port Tampa; but it has such receiving tanks in the City of Tampa some miles distant from Port Tampa and reached by defendant's railroad lines from Port Tampa to Tampa. All of the lubricating oil received at Port Tampa is pumped directly from the steamer bringing the same through pipes into tank cars furnished by complainant and is then carried by defendant to complainant's receiving tanks at Tampa, as soon as shipping instructions and bills of lading are given and issued, which shipping instructions are generally given the day the oil is pumped into the cars at Port Tampa, or the following day.

d. Port Tampa—Fuel Oil.—Complainant acquires its fuel oil outside of the State of Florida, to wit, in Mexico, Louisiana and Texas, for supplying its customers in the interior of the State of Florida. Before or at the time of acquiring this fuel oil, complainant has contracts with customers in the interior of the State of Florida, for supplying them with such oil, and which contracts cover practically all of the oil thus acquired—at least 95% of it; and the oil is acquired by complainant for the purposes of filling these contracts with its customers at points in the interior of the State of Florida.

Complainant has on the west coast of Florida at Port Tampa certain receiving tanks for fuel oil. When the fuel

oil arrives by steamer at Port Tampa, it is pumped from the steamer through pipe lines into these receiving tanks, [fol. 18] and from the receiving tanks is pumped into tank cars, and by these carried on to the consumers thereof, complainant's customers, in the interior of said State. The capacity of complainant's receiving tanks for fuel oil at Port Tampa is only sufficient to hold about 40% in excess of one month's average supply of such oil, that is to say, the amount which complainant on an average transports from Port Tampa to its customers in the interior of said State. And thus there is practically a continuous flow of such fuel oil from points of origin outside of Florida to points of destination in the interior of Florida. And it is known to complainant when it acquires said fuel oil and when the same starts from its point of origin outside of Florida that it is destined for delivery to customers of complainant within the interior of the State of Florida and is not to stop at the coast of Florida, except to the extent of such stoppage in transit as may be made necessary for convenience in handling and in changing from water transportation to rail transportation. And such commerce is interstate commerce from the point of origin of said oil outside of Florida to the point of delivery to complainant's customers in the interior of Florida.

e. Jacksonville.—Complainant's method of transporting and handling petroleum products through the port of Jacksonville on the east coast of Florida is substantially the same as its method of handling such products through Port Tampa on the West coast of Florida, except that a substantial proportion of such products pass on through Jacksonville and through Florida to other States, such as Georgia and Alabama. And all of which business constitutes interstate commerce.

8. The facts as to conditions prior to June 15, 1923, the date referred to in the bill of complaint, are as follows:

Prior to that date there had been uncertainty in the minds of shippers and carriers as to whether business of the character referred to in this action constituted interstate commerce or, as to the part of it transported within the State of Florida, intrastate commerce. The Supreme Court of the United States had decided certain cases, which

bore upon the subject, and the Interstate Commerce Commission had likewise decided certain cases of the same character. The latest of these cases decided prior to June 15, 1923, was that of the International Agricultural Corporation and other phosphate mining companies vs. Director General of Railroads and this defendant and the Seaboard Air Line Railroad Company, 60 I. C. C. 726, before the [fol. 19] Interstate Commerce Commission in regard to the rate on fuel oil from Tampa and Port Tampa, Florida, to points in the interior of Florida, known as the "Bone Valley District," in which a great deal of fuel oil is consumed, and which involved the handling and transportation of fuel oil in the manner in which fuel oil is described in this answer as being handled by the complainant. That proceeding was instituted before the Interstate Commerce Commission on September 2, 1919, when the railroads of the country were still under the control of the Director General of Railroads of the United States. And it was decided by the Interstate Commerce Commission on March 5, 1921. In that decision the Interstate Commerce Commission treated the traffic involved as interstate traffic and made rulings and regulations concerning the same as such.

Following the decision of that case by the Interstate Commerce Commission, the defendant herein and the Seaboard Air Line Railroad Company applied interstate rates on fuel oil transported by them in the manner herein described from Tampa and Port Tampa, Florida, to points in the interior of Florida. But no action was taken immediately following said decision as to the transportation of petroleum products other than fuel oil, although the conditions were substantially similar.

However, the defendant, effective January 15th, 1922, published a complete line of rates on refined oil, gasoline and fuel oil, in carload lots, from the ports of Port Tampa and Tampa to Florida points, under heading reading "applicable interstate and/or intrastate" so that from January 15th, 1922, the rates from and to the points beforementioned were the same interstate and intrastate, and therefore it cannot be said that traffic moving under these rates subsequent to January 15th, 1922, was not treated as interstate commerce. The intent in giving interstate application to the afore-mentioned rates on refined oil,

gasoline, etc., in carload lots, from Port Tampa and Tampa was in conformity with the principle established as a result of the decision of the Interstate Commerce Commission in the International Agricultural Corporation Case, supra. Similarly the rates from Jacksonville to interior Florida points on refined oil and gasoline, carload, were prior to June 15th, 1923, generally not restricted and applied either on interstate or intrastate traffic, and the same thing was true as to a large number of fuel oil carload rates from Jacksonville so that traffic that moved from Jacksonville prior to June 15th, 1923, on such unrestricted and uniform [fol. 20] rates cannot be said not to have been moved under the interstate rates and in interstate commerce. However, defendant acknowledges that as to some petroleum products traffic moving from Tampa and Port Tampa to interior Florida points, while interstate rates were specifically provided to move such traffic, through misunderstanding there was a considerable movement of such traffic prior to June 15th, 1923, on basis of the intrastate rates. Defendant also admits that its practices and method of publishing rates were not uniform with those of competing lines.

The result of this was great confusion and great satisfaction. And this unsatisfactory situation having been brought to the attention of the executive officers of defendant and the Seaboard Air Line Railroad Company, the conclusion was reached by them that all of this traffic in petroleum products, such as herein described, should be treated and considered as interstate commerce, and that the interstate rates should apply to the same. And thereupon interstate rates were applied to said traffic under an adjustment of rates issued May 10, 1923, to take effect June 15, 1923, the date referred to in the bill of complaint, since which time all said traffic has been treated uniformly as interstate. In some cases the interstate rates on such traffic are less than the intrastate rates. In some cases they are the same. And in some cases the interstate rates exceed the intrastate rates.

Subsequent to the action of the Railroad Companies in treating all said commerce as interstate, and in applying the interstate rates thereto effective June 15, 1923, complainant herein, Standard Oil Company of Kentucky, re-

quested the Interstate Commerce Commission to suspend certain, or all, of the revised rates on petroleum products from Florida ports to Florida points. The Commission, through its Suspension Board, suggested to the Florida carriers, to wit, the Railroad Companies, to submit an explanation of the causes and conditions which led to their revision in rates. This explanation was made by the carriers. And the Interstate Commerce Commission denied the application of complainant for a suspension of said rates. And said rates have continued to the present time.

9. If defendant's course in charging interstate rates upon the commerce referred to in the bill of complaint, and as complained of therein, is wrongful, complainant has a complete and adequate remedy at law. It can bring an action at law against defendant in any Court of competent jurisdiction, alleging that it has been compelled to pay, and has [fol. 21] paid, unlawful and excessive rates on said commerce, and in such case the question can be determined whether such commerce is interstate or intrastate, and if it be determined that the same is intrastate, and that complainant has been required to pay more than was lawful to defendant, judgment can be given against defendant, and such judgment can be collected from defendant, which is entirely solvent and able to pay any such judgment that may be rendered. And if it should refuse to pay same, the amount thereof could be collected out of defendant by coercive process.

10. Moreover, the Statutes of the State of Florida, in which the business referred to in the bill of complaint has been conducted, furnish a remedy to complainant if it is right in its contentions herein in addition to the remedy by an action at law such as is referred to in the last preceding paragraph hereof. The Statutes of Florida contain the following provisions, being paragraphs 4649, 4650 and 4661 of the Revised General Statutes of Florida, Edition of 1920, which are still in effect, to wit:

"4649. Power to Sue in Behalf of Individuals, etc.—If any railroad, railroad company or other common carrier, doing business in this State shall, in violation or disregard of any rule, rate or regulation provided by the commissioners aforesaid, inflict any wrong or injury upon any per-

son, it shall be the duty of the railroad commissioners if requested by such injured person to institute proceedings to compel restitution and such action by the railroad commission shall preclude settlement by the party or parties injured without the consent of the commission. And if any railroad company or common carrier shall discriminate, by way of rebate, or otherwise, directly or indirectly, in favor of any consignor or consignee of freights within this State, or allow him a reduction of the rate fixed by said commissioners as reasonable and just, any other consignor or consignee of freights within this State shall have a right of action against the said railroad company or common carrier, and the amount of his damages shall be fixed by a jury, unless a jury shall be waived, and the measure of damages shall be such sum or sums of money as will fairly compensate the injury done to said last mentioned consignor or consignee. But in all such cases demand in writing on said railroad, railroad company or common [fol. 22] carrier shall be made for the money damages sustained before suit is brought for recovery under this section and all suits under this Article shall be brought within two years after the commission of the alleged wrong or injury, except in cases where the railroad commissioners have heretofore been or shall hereafter be, by refusal of such railroad or common carrier to observe the rates, rules, schedules or regulations by the railroad commissioners, compelled to resort to suits to enforce such rates, rules, schedules or regulations, and in such cases suits for such loss, damage or penalty may be brought within twelve months after the termination of such suits in favor of the railroad commissioners."

"4650. Rights of Injured Persons.—Any person, firm or corporation from whom any moneys shall have been exacted by any such company or common carrier in excess of the amounts properly chargeable under the provisions of this chapter, and any person, firm or corporation who shall have suffered any pecuniary injury by the violation of any such company or common carrier of any provisions of this chapter, shall have the right, by written demand, to require the commissioners to enforce recovery of his damages, and upon failure of the Commissioners to institute suit therefor within ninety days after such written demand, institute suit

in his own name against any such company or common carrier in any court of competent jurisdiction in the county in which the cause of action arose, or in any county in the State through or in which such company or common carrier runs or does business; and any such person, firm or corporation, upon establishing his right of recovery, shall be entitled to recover the total amount of such overcharge or other pecuniary injury, with interest thereon, together with such additional amount as the jury may find necessary to reasonably compensate him for all expense, including the value of his own time and services, and all reasonable cost and attorneys' fees incurred in the recovery of such damages, and such right of action shall exist in the legal representatives or assignee of any such person, corporation or firm."

"4661. Mandamus, Injunction etc.; Discovery of Names of Persons Damaged by Carrier's Violation of Law Compelling Payment, etc.—Said commissioners may, at their discretion, cause to be instituted in any court of competent jurisdiction in this State, by the Attorney General, State [fol. 23] Attorney or special counsel, designated by them, in the name of the State, proceedings by or for mandamus, injunction, mandatory injunction, prohibition or procendo, against any such company or common carrier subject to the provisions of this Chapter, or against any office or officer, agent or agents, thereof to compel the observance of the provisions of this Chapter, or any rule, rate or regulation of the commissioners made thereunder, or to compel the accounting for and refunding of any moneys exacted in violation of any one of the provisions of this Chapter. In all cases where any common carrier shall have become indebted or liable for damages to a large number of persons by reason of its failure to abide by or comply with the provisions of any rule, rate or regulation of the commissioners, or by its violation of any provisions of this Chapter, it shall be the duty of the railroad commissioners, to demand of such common carrier by written notice served upon it, a discovery of the names of all such persons and an accounting and payment to all such persons of all such indebtedness or damages, and if such common carrier shall refuse or shall fail to make such accountings and payments within sixty days after such notice shall have

been served upon it, it shall be the duty of the railroad commissioners to institute a proceeding or proceedings by or for mandamus or mandatory injunction against such common carrier to compel the making of such accountings and payments, and in any such proceeding upon an adjudication against such common carrier there shall be taxed as costs and paid over to the railroad commissioners to be paid out by them all such costs, attorneys' fees and expenses of such proceedings as shall appear to the court reasonable under all the circumstances and necessary to effect such accounting and settlement without cost or expense to the State or to the claimants, and the courts shall make all such orders as may be necessary or advisable to secure an accounting and payment of costs and damages as full and complete as may appear to be practicable, and any money not paid over to the persons to whom it shall be due within thirty days after such payment shall have been ordered made, shall be paid into the registry of the court to be disbursed to the proper persons upon orders of the court. And said commissioners are hereby given and granted full authority to do and perform any act or thing [fol. 24] necessary to be done to effectually carry out and enforce the provisions and objects of this Chapter."

And complainant herein has heretofore filed a petition before the Railroad Commission of Florida pending against this defendant and other Railroad Companies, and requesting the Florida Railroad Commission to proceed in a Court of competent jurisdiction for the issuance of process and a rule compelling and requiring this defendant, and the other Railroad Companies, to show cause why a temporary restraining order should not be issued, enjoining them from continuing to apply interstate rates upon shipments of the character referred to and described in the bill of complaint herein; whereupon said Florida Railroad Commission did file petitions in the Supreme Court of the State of Florida praying for a mandamus to compel this defendant, and the other railroads, to desist from charging said interstate rates, and requiring them to charge intrastate rates on petroleum products, whereupon an alternative writ of mandamus was issued out of the Supreme Court of the State of Florida, requiring this defendant, and the other railroads, to appear before said Court and show cause why

said intrastate freight rates should not be applied upon said products. This defendant duly answered said writ. But defendant is advised and says that complainant has shown no desire to have said cause prepared and brought on to final judgment; and the same is now pending in the Supreme Court of Florida remaining to be disposed of in accordance with the laws of that State.

Wherefore, defendant having fully answered, prays to be hence dismissed, and for a decree for its costs herein expended.

Thomas W. Davis, Helm Bruce, Attorneys for Defendant.

Duly sworn to by T. F. Darden. Jurat omitted in printing.

[fol. 25] In United States District Court

Opinion—Filed June 10, 1926

In this suit the plaintiff, Standard Oil Company of Kentucky, a corporation organized under the laws of the State of Kentucky, seeks to enjoin the defendant, Atlantic Coast Line Railroad Company, a corporation organized under the laws of the State of Virginia, from charging other than the lawfully published intrastate rates upon its products shipped over defendant's railroad in the State of Florida from Port Tampa, Tampa and Jacksonville to other points in that State over routes wholly within the State. The bill alleges that since June 15, 1923, the defendant has been wrongfully applying interstate rates to these shipments, and an accounting and recovery are asked against the defendant for the difference between the interstate and intrastate rates on these shipments. The particular facts relative to the manner in which plaintiff conducts its Florida business, out of which the shipments in question arise, will be more fully stated hereafter. A temporary injunction was asked by the plaintiff, to which the defendant seasonably objected, and at the same time moved to dismiss the bill because of want of equity therein, and particularly upon the ground that plaintiff has an adequate remedy at

law. On the hearing for a temporary injunction the Court, in an oral opinion, held that the case was one cognizable in equity, and overruled the motion to dismiss the bill, but denied the motion for a temporary injunction, leaving the merits of the case to be developed upon final hearing. The [fol. 26] case has been prepared on its merits and is now before the Court on final submission.

The claim of the defendant, that this action is not cognizable in equity because of the existence of an adequate remedy at law, is again urged upon the Court, and this question will be first considered.

It is an elementary equity rule that courts of equity do not have jurisdiction to grant relief, where the plaintiff has a plain, adequate and complete remedy at law. Section 267 of the Judicial Code is merely declaratory of this rule, which has always been binding upon the Federal Courts. In applying this equity rule, no discretion is left to the Court. If the plaintiff has a full, complete and adequate remedy at law, the bill must be dismissed. It is well settled, however, that to constitute an adequate remedy at law, the remedy must be as complete, practicable, and as efficient, both in respect to the final relief sought and the mode of obtaining it, as is the remedy in equity; Boise Artesian Water Co. v. Boise City, 213 U. S. 276; Tyler v. Savage, 143 U. S. 79; Kilbourne v. Sunderland, 130 U. S. 505; and must be available to the plaintiff in a Federal Court.

One ground urged by the plaintiff in support of its contention that the remedy at law is inadequate, is the familiar one that a multiplicity of suits will result unless equity is resorted to. It is pointed out that each separate shipment by the plaintiff constitutes a separate cause of action, and, if remitted to its remedy at law—provided one exists—it would have to bring a separate suit upon each shipment to fully protect its rights. One of the recognized grounds of equitable jurisdiction is that plaintiff would be subjected to a multiplicity of suits but for such intervention. Where, however,—

"* * * the multiplicity of suits to be feared consists in repetitions of suits by the same person against the plaintiff for causes of action arising out of the same facts and legal principles, a court of equity ought not to interfere

upon that ground, unless it is clearly necessary to protect the plaintiff from continued and vexatious litigation."

Boise Artesian Water Co. v. Boise City, supra.

It would seem equally sound to hold that where the multiplicity of suits urged as a basis of equitable jurisdiction consists merely of repeated suits by the plaintiff against the same defendant, upon causes of action identical in nature and arising out of the same facts and based upon [fol. 27] the same legal principles, equity ought not to intervene, unless it is clearly necessary to protect the plaintiff from a situation which he himself cannot control. It is true each shipment would constitute a separate cause of action, but a separate suit would not have to be brought on each shipment. The plaintiff could unite in one suit its claims growing out of each shipment made up to the time of filing its suit, and that action would fully determine every question which could be determined in an equity action. There would be no necessity for other suits, except possibly to avoid the statute of limitations, and, as intimated in the case of Boise Artesian Water Co. v. Boise City, supra, such suits would not be such a multiplicity of actions as is required to give equity jurisdiction.

Now, under the Florida law, the State Railroad Commissioners are given the power, and it is made their duty, to establish rates and charges for the transportation of freight and passengers on and over lines over which they have jurisdiction. These rates are made after an opportunity is given the carrier to be heard, and, when made, they are binding upon the carrier, except it can be shown in a suit in a Court of competent jurisdiction that they are unreasonable and confiscatory. When once made, shippers have a right to demand that these rates be applied to all shipments to which they are applicable. That right is expressly given by the statute, and the statute prescribes the method of procedure by which any shipper who has been charged more than the rates fixed by the Commissioners may recover the excess. Under Sections 4649 and 4650 of the Revised General Statutes of Florida, 1920 Edition, any shipper who has been charged by a common carrier more than the rates fixed by the Railroad Commissioners may make written demand upon the Commis-

sioners to bring suit against the carrier thus offending to recover the overcharge, and, if the Commissioners fail to comply with the request within ninety days after such written demand, then the shipper is free to prosecute a suit against the carrier in his own name. The decisions of the Supreme Court of Florida seem to hold that in an action for the recovery of the excess over the rates fixed by the Commissioners, the remedy furnished by the statute is exclusive. The Court has no hesitation in holding that the remedy furnished by the statute is not adequate to protect the plaintiff in the statutory right given it by the laws of Florida, to demand the application of the rates fixed by the Commissioners. For a remedy at law to be adequate, the plaintiff must have the right to bring a suit in his own name, [fol. 28] represented by counsel of his own selection, with the same right to direct his side of the litigation as is accorded to plaintiffs in other ordinary actions. Such rights are not given the aggrieved shipper by the statute. The action is instituted by the Commissioners; the conduct of the plaintiff's case is controlled by the Commissioners; the plaintiff's interests are not represented by counsel of his own selection. In short, the statute requires an aggrieved shipper to prosecute his law suit by proxy, and he does not even have the right to name his proxy. The law does that for him, and under the law he can not even settle the suit without the consent of the Commissioners. This remedy falls far short of being as full, complete, practicable and as efficient as the remedy given in equity.

It is insisted by the defendant, however, that if the shipper does not want to rely upon his statutory right to have applied to his shipments the rates fixed by the Commissioners, and to pursue the statutory remedy provided therefor, he may waive that right and remedy, and sue upon the common law right to recover any money charged him by the carrier in excess of just and reasonable rates, and that this common law remedy is as full, complete and adequate as that given in equity. The Supreme Court of Florida has expressly held that this common law action was not abolished by the right created by the statute, and that an aggrieved shipper may elect which of the two causes of action he will prosecute. Cullen v. Seaboard

Air Line Railway Co., 63 Fla. 122. A sufficient answer to the defendant's suggestion, however, is that the cause of action asserted by the plaintiff in this case is to recover the difference between the lawfully established intrastate rates and those charged by the defendant, and, as heretofore shown, for this particular cause of action the remedy at law given by the statute is not adequate. Defendant has suggested that the common law action recognized by the Courts of Florida is not a different cause of action from the statutory one, but merely a different way of enforcing the statutory cause of action; but this contention is not sustained by the Florida decisions, which hold that the common law action and the statutory action are entirely separate and distinct from each other, and that where the statutory cause of action is barred by limitation, the common law action may be maintained, if not itself barred by limitation.

So the statutory action and the common law action can not be said to be merely different remedies for the same right, and therefore the common law action permitted under [fol. 29] the law of Florida can not be said to be the equivalent of the right asserted by the plaintiff in this suit to have the rates fixed by the Commissioners applied to the shipments here involved. Should it be conceded that the common law action to recover money paid on rates in excess of reasonable rates, and this equity action based upon the rates fixed by the Commissioners, were but different remedies for the same right, it would not follow that equity would be without jurisdiction. In a suit to enforce the statutory rates, as such, the Florida law expressly provides that the rates fixed by the Commissioners shall be treated by the Courts as prima facie just and reasonable. Indeed, under the rule that the acts of duly constituted governmental agencies acting within their proper sphere are accepted by the Courts as prima facie correct, that would be the rule if the Florida law contained no such provision. So, in an equity action against the railroad company to enforce the rates fixed by the Florida Railroad Commissioners, if any question should arise as to the reasonableness of the rates relied upon, the burden would be upon the railroad company to establish their unreasonableness. On the other hand, in a common law action to recover money paid in ex-

cess of reasonable rates, it would be necessary for the plaintiff, in order to recover at all, to allege that the rates charged by the carrier were unreasonable and extortionate, and the burden would be upon plaintiff to prove their unreasonableness. No recovery could be allowed a plaintiff in such an action until he had established to the satisfaction of the jury, not only that the rates charged were unreasonable, but the extent of their unreasonableness. This would throw upon a plaintiff in the common law action a burden that he is not required to assume in an action in equity for the recovery of rates charged in excess of those fixed by the Commissioners, and it might be entirely possible that the rates fixed by a jury as reasonable in a common law action would not to any extent coincide with the rates fixed by the State Railroad Commissioners.

So, it is extremely doubtful if a remedy at law which throws upon the plaintiff the burden of proving that rates charged are unreasonable, and leaves to a jury the decision of such a question, is as full, practicable, complete and as efficient, either as to the final relief or the method of obtaining it, as is an equitable remedy which imposes no such burden upon the plaintiff. It may be suggested that this is a theoretical difficulty, and not an actual one, for the [fol. 30] reason that the Florida Courts held that even in the common law action the schedule of rates fixed by the Commissioners is prima facie evidence of what are reasonable rates; but it must be remembered that so far as the common law right is concerned, the Florida statute is merely a rule of evidence, and has no extraterritorial effect. The entire burden would be with the plaintiff in such a case, and it appears to this Court that it would be contrary to sound principles to hold that a rate fixed by the Railroad Commissioners of Florida, which is in no sense the basis of the action, would be prima facie evidence of the unreasonableness of the rate charged by the carrier. Of course, the plaintiff could bring its action in the State Courts of Florida and get the benefit of the statutory presumption, but a remedy is not adequate which must be pursued in the State Courts alone, where the plaintiff has the constitutional right to resort to the Federal Courts, as in this case. Plaintiff could probably get the benefit of the statutory presumption in the Federal Court of Florida,

but it can not sue the defendant in that court, because neither the plaintiff nor the defendant are citizens or residents of that State, within the meaning of the Judicial Code. So, in trying to enforce in this Court its common law right of action, the plaintiff would be confronted with substantial obstacles, with which it is not confronted in this equity action.

Again, in an action at law to recover money paid to a carrier in excess of reasonable rates, the question of what is a reasonable rate in any particular case would be a question of fact to be submitted to the jury. To determine what is a reasonable rate is always a most difficult problem for those trained in the consideration of such questions, and it is safe to say an almost impossible one for a jury. Furthermore, in a common law action, as in this equity action, the plaintiff's claim would be made up of alleged excessive charges on many shipments of different commodities from and to different points, probably carrying different rates. Not only would it be necessary to establish the reasonable rate on each commodity from and to the different points involved, but a complicated accounting would be necessary, and in matters of complicated accounting, the remedy in equity is generally regarded as more adequate and efficient than the remedy at law. Story, in his work on Equity Jurisprudence, Section 450, recognized this fact by stating:

[fol. 31] "There can be no real doubt that the remedy in equity, in cases of accounting, is generally more complete and adequate than it is or can be at law."

and this statement of Story's was quoted with approval by the Supreme Court in the case of Kilbourn v. Sunderland, 130 U. S. 505.

For the reasons stated, the Court is satisfied that the common law remedy afforded plaintiff is not as efficient, either as to the final relief sought or the mode of obtaining it, as afforded by this Court sitting as a Court of equity, and, in view of the conclusions already announced as to the inadequacy of the statutory remedy, it follows that the Court is of opinion that equity has jurisdiction of the cause of action stated in the bill.

Coming to the merits of the case, which involve the question of whether interstate or intrastate rates should apply on the movement of plaintiff's products involved in this case, a somewhat detailed statement of the manner in which plaintiff's business is conducted in the State of Florida becomes necessary.

The plaintiff is engaged, in the State of Florida, in the business of buying and selling gasoline, refined oil, lubricating oil, fuel oil and other petroleum products, and has been so engaged for many years. There is little if any, dispute about the way in which this business is conducted. As alleged in the pleading and established by the evidence, the business is conducted in substantially the following way.

Plaintiff maintains at Port Tampa, Tampa and Jacksonville, all in the State of Florida, very large storage facilities, consisting of tanks and warehouses for receiving and storing gasoline, refined oil, fuel oil and lubricating oil. Plaintiff does not produce nor refine any of these products sold by it to its customers in Florida, but, with the exception of fuel oil, practically all of them are purchased from the Standard Oil Company of Louisiana, and supplied by that company from its refineries at Baton Rouge, Louisiana, and its fuel oil is purchased from the Standard Oil Company of New Jersey, and supplied by that company from its source of supply at Tampico, Mexico; and all of the products so purchased are brought into Port Tampa and Jacksonville in tank steamers owned and chartered by the sellers, and, with the exception of lubricating oil, are pumped by ships' pumps from the steamers through pipe lines owned by the plaintiff into plaintiff's storage tanks at Port Tampa and at St. Johns River Terminal, Jack- [fol. 32] sonville, Florida. Lubricating oil is pumped from the tank steamers by ships' pumps into tank cars, and by them conveyed over defendant's lines to plaintiff's storage tanks at Tampa, a distance of about nine miles from Port Tampa, and to Kings Road, a distance of about two miles from St. Johns River Terminal.

All of these products are purchased by plaintiff, to be delivered to it by the sellers at Port Tampa and Jacksonville, title not passing to the plaintiff until the products have

been so delivered, settlement between the seller and purchaser being made upon the basis of the amount actually delivered into tank cars and tanks. The prices to be paid for gasoline, refined oil and lubricating oil are the current market prices in effect at the time the products are delivered to plaintiff at Port Tampa and Jacksonville. Fuel oil is purchased on yearly contracts at stipulated prices. The tank cars used by the plaintiff in its business are not owned by the railroad company, but are leased by the plaintiff and hauled by the defendant over its lines in common carrier service.

At Port Tampa plaintiff maintains for the storage of gasoline five tanks, with an aggregate capacity of 110,000 barrels; for refined oil, storage tanks with a total capacity of 20,000 barrels, and for fuel oil, tanks with a total capacity of 127,000 barrels; and at Jacksonville it maintains for the storage of gasoline, tanks with a total capacity of 162,000 barrels; for refined oil, storage tanks with a capacity of 40,000 barrels, and for fuel oil, storage tanks with a total capacity of 145,000 barrels.

All of the gasoline, refined oil, fuel oil and lubricating oil delivered to plaintiff at Port Tampa is sold in the State of Florida, while about seventy per cent of the gasoline and refined oil received by plaintiff at St. Johns River Terminal is sold in the State of Florida, as is practically all of the fuel oil and lubricating oil received at that point. Plaintiff's purchases of gasoline, refined oil and lubricating oil are made currently as the needs of the business and the condition of the market seem to justify, and at the time the purchases are made and at the time the product is received into the plaintiff's storage tanks at Port Tampa and St. Johns River Terminal, it has not been sold, and plaintiff does not know to whom it will be sold, when it will be sold, where it will eventually go, nor when it will be taken out of the storage tanks. None of the gasoline, refined oil, fuel oil nor lubricating oil received in the storage tanks at Port Tampa is disposed of locally, as there is no demand for any of same at that point, and the same thing is substantially true at Jacksonville, plaintiff knowing at the time said [fol. 33] products are purchased that they will ultimately be shipped to and disposed of at other points in Florida, and, to a small extent, in the States of Georgia and Alabama, from the Jacksonville tanks.

Throughout the State of Florida the plaintiff maintains bulk stations, where it has sufficient tankage and storage facilities for gasoline, refined oil and lubricating oil to meet the current needs of its customers supplied from the respective bulk stations. These bulk stations ordinarily get their supply of gasoline and refined oil from the storage tanks maintained at Port Tampa and Jacksonville, same being delivered to the bulk stations by means of tank cars, no gasoline or refined oil being delivered to consumers directly from the storage tanks at Port Tampa and Jacksonville. The gasoline and refined oils are delivered from the bulk stations to plaintiff's customers by means of tank wagons. Plaintiff also maintains a large number of service stations in the State of Florida, which, in the usual course of business, are supplied with gasoline and refined oil directly from the bulk stations, although occasionally a service station is supplied with gasoline shipped in tank cars directly from Port Tampa and Jacksonville.

Under ordinary business conditions plaintiff keeps in its storage tanks at Port Tampa and at Jacksonville a sufficient supply of gasoline and refined oil to take care of its requirements for from forty-five to sixty days; a sufficient supply of fuel oil to take care of its requirements for from thirty to sixty days; and in its storage tanks at Tampa and at Kings Road a sufficient supply of lubricating oil to take care of its requirements for from sixty to ninety days, the exact time depending entirely upon business conditions and demands for the products in that section of Florida supplied from the respective storage tanks. The plaintiff pays local taxes to the State of Florida on all of its products in hand in its storage tanks on the Florida assessing dates.

After the lubricating oil is placed in the storage tanks at Tampa and at Kings Road, it is distributed as sold in tank wagons, barrels and smaller containers, although a small percentage of same is sent out in tank wagon cars to plaintiff's bulk stations.

Approximately ninety-five per cent of the fuel oil sold by plaintiff in Florida is on contracts made before the oil has been shipped from the point of origin to plaintiff at Port Tampa and Jacksonville. Most of these contracts are for a period of a year, covering the requirements of the

[fol. 34] various consumers, with average monthly deliveries stipulated, although in actual practice shipments from the storage tanks to the consumers are accommodated to their needs. There is no separation of the fuel oil under contract from that not under contract, all being of the same grade. At the time the shipment of the fuel oil is made from the point of origin, plaintiff can not say where any particular cargo of same, or any part thereof, will go after it has been pumped into the storage tanks, to whom it will go, nor when it will be shipped out from the storage tanks. At the time of shipment from the point of origin, the only destinations which can be given are Port Tampa and Jacksonville, respectively.

The defendant company has nothing to do with the boat movement of the products used by the plaintiff in its Florida business. There is no through rate and no joint arrangement of any character between the water carrier and the defendant. Movement by boat, while interstate commerce, is not subject to regulation by the Interstate Commerce Commission. From two to four boats per month, with an average capacity of 45,000 barrels each, discharge their cargoes in plaintiff's storage facilities at Port Tampa and Jacksonville each month. A boat requires from one to three days to discharge its cargo, and while boats are engaged in discharging their cargoes into the storage tanks of plaintiff, tank cars are being loaded from the same storage tanks, for the purpose of supplying plaintiff's bulk stations, service stations and customers.

Plaintiff has been conducting its business in the manner here stated for many years, and it was not adopted for the purpose of evading the payment of interstate rates. That is merely the fixed, settled course of conducting its business. No question of bad faith on its part is suggested by the record. Its business could not be conducted without the storage facilities herein described, and until June 15, 1923, all shipments by the plaintiff from Port Tampa, Tampa and Jacksonville over defendant's lines to other points in Florida, over purely intrastate routes, were accepted by the defendant as intrastate commerce. Since June 15, 1923, the defendant has classified these shipments as interstate commerce, and collected freight on the basis of interstate rates.

In determining whether or not a particular movement is interstate or intrastate, the Court must look to the essential nature of the movement, and not merely to its accidents nor its isolated incidents. The question is not determined by the character of billing, the mere form of contract between [fol. 35] carrier and shipper, the continuity of movement or lack thereof; by whether the shipment has been in the continuous possession of the carrier, or by whether the bulk has or has not been broken. Southern Pacific Terminal Co. v. Interstate Commerce Commission, 219 U. S. 498; Ohio Railroad Commission v. Worthington, 225 U. S. 101; Texas & New Orleans R. R. Co. v. Sabine Tram Co., 227 U. S. 111; Railroad Commission of Louisiana v. Texas & Pacific Railway Co., 229 U. S. 336; Baer Bros. Mercantile Co. v. Denver & Rio Grande R. R. Co., 233 U. S. 479; B. & O. and S. W. R. R. Co. v. Settle, 260 U. S. 166; Missouri v. Kansas Gas Co., 265 U. S. 298.

Where the question, as is the case here, is whether an admittedly interstate movement ends at a given point, a vital element is the intent at the time the shipment is made of the person having control of the shipment and its future movement after its arrival at the point in dispute, and the intent is not that which he forms after the initial movement has begun, nor after the arrival of the shipment at the given point, but the question is, what was his real intent at the time the initial movement began. If, at that time, his real purpose was that the movement should definitely and in good faith end at the given point, and that any future movements of the shipment from that point should be as the result of a new and independent arrangement in good faith made, then all the authorities seem to agree that the character of the second movement is in no sense colored by the first movement, nor it is considered a part thereof.

Measured by this rule, it seems to the Court that the interstate journey of the gasoline, refined oil and fuel oil involved in this case, ends upon the delivery of those products into plaintiff's storage tanks at Port Tampa and Jacksonville, respectively; and that the interstate journey of the lubricating oil, if it does not end upon the delivery of same into the tank cars into which it is pumped at Port Tampa and Jacksonville, certainly ends when those tank cars have delivered their contents into the storage tanks

at Tampa and Kings Road, maintained by the plaintiff for the storage of lubricating oil. There is no question in this case of bad faith on the part of the plaintiff in having its purchases delivered to it at Port Tampa and Jacksonville. It does not for the purpose of ostensibly, but not in good faith, ending an interstate movement in order to get the benefit of a lower intrastate rate on subsequent movements of the product. This fact distinguishes this case from that of B. & O. and S. W. R. R. Co. v. Settle, supra. In that case it was admitted that the sole purpose of billing [fol. 36] the product from the mill in the South to Oakley, Ohio, and from there rebilling it to Madison, Ohio, at the local rate, was to get the advantage of a cheaper rate by thus combining an interstate rate with an intrastate one, notwithstanding the admitted fact that at the time the initial movement began, the real destination intended was Madison, rather than Oakley. The movement was essentially national in its character, and to have permitted such an admitted subterfuge to defeat national control would have opened the door to all kinds of evasions and unlawful preferences.

In the case at bar the movement from storage to other points in Florida is essentially local in character. The stoppage is not to defeat a through rate—there is none. It is not merely a halting for convenience of carriage. While as a practical matter it is necessary upon arrival at the port to place the cargoes in storage before they can be loaded into cars and carried to the various points of ultimate destination, the plaintiff has another and as equally important purpose in so handling the cargoes, viz., convenient and economical handling and distribution of its products. In the absence of bad faith, it is submitted that the fortuitous circumstance that the manner in which plaintiff handles its products upon delivery to it is also a convenient means of changing from water transportation to rail transportation, should not be made the basis of impressing upon a purely local intrastate movement a national character.

It is argued that plaintiff knows before any of the products start from the point of origin that they will not be disposed of at points where they are unloaded from boats, but they will ultimately move further into the interior of Flor-

ida, and that therefore the original movement, interstate in character, can not be said to have ended until ultimate destination has been arrived at. This contention overlooks the right of a shipper in good faith and for the convenience of his business to gather in interstate commerce the articles in which he deals, at distributing points, and thereafter, as the demands of his business arise, ship the articles so gathered in an entirely separate and distinct movement from the original one, even though the bulk of the article is not broken, the continuity of the journey not perceptibly interrupted, nor the articles transferred from the original means of carriage. Chicago, Milwaukee & St. Paul R. R. Co. v. Iowa, 233 U. S. 334. If a shipper did not have this right, then no jobbing concern, gathering its arti- [fol. 37] cles by interstate commerce into its central warehouse, could ship these articles from the warehouse in the regular course of business to other points in the same State as the warehouse at intrastate rates. Yet, such is the common practice, and recognized by Mr. Justice Brandeis in the case of B. & O. and S. W. R. R. Co. v. Settle, supra, as entirely proper and legitimate. In that case, in discussing this recognized practice, the Court said:

"The instances are many where a local shipment follows quickly upon an interstate shipment and yet is not to be deemed part of it, even though some further shipment was contemplated when the original movement began. Shipments to and from distributing points often present this situation, if applicable tariffs do not confer reconsignment or transit privileges. The distinction is clear between cases of that character and the one at bar, where the essential nature of the traffic as a through movement to the point of ultimate destination is shown by the original and persisting intention of the shippers which was carried out."

It is suggested by the defendant, however, that the storage tanks at Fort Tampa and Jacksonville, and at Tampa and Kings Road, can not be considered distributing points, because in the main, distribution to the consumers is not made from these points, but from plaintiff's bulk stations and service stations. It seems to the Court that this distinction is a hypertechnical one, and no authority is cited to sustain the contention that points of distribution,

from which local shipments free of interstate character may be made, must be points from which distribution directly to the consumers is made. It seems to the Court that distribution from these storage tanks to other places of business of the plaintiff in the State of Florida, as the needs of its business demand, where the particular movement was not definitely intended and in mind at the time the original interstate movement commenced, is as much local in its character as if the second movement had been directly to the consumer.

Furthermore, the contention of the defendant, that the movement from the storage tanks to the bulk stations and service stations is not a local distributing movement entitled to take the intrastate rate, is not altogether consistent with its further contention, that the movement of fuel oil from the storage tanks directly to the consumer must take [fol. 38] the interstate rate. The defendant would avoid this seeming inconsistency, however, by the manner in which plaintiff's fuel oil business is conducted. It is argued that inasmuch as this fuel oil is contracted in large part to consumers before it is shipped from Tampico, and the points of delivery to consumers is known to the plaintiff at the time of the beginning of the initial movement, the interstate journey can not be considered ended until it has been delivered to the consumer; and in support of this contention it largely relies upon the cases of Texas & New Orleans R. R. Co. v. Sabine Tram Co., 227 U. S. 111, and Railroad Commission of Ohio v. Worthington, Receiver, &c., 225 U. S. 101. In this contention defendant apparently loses sight of the fact that at the time the movement from Tampico starts, it is plaintiff's definite intention to end the interstate journey at Port Tampa and Jacksonville—not for the purpose of avoiding the interstate rate, nor for convenience of carriage alone, but for fixed and definite business purposes, viz., for storage and safe keeping until time of delivery arrives. In determining the essential character of the movement it is important also to remember that notwithstanding the fact that this product is sold before it starts from Tampico, no particular part of the cargo is destined or intended for any particular purchaser, nor for delivery at any particular place beyond the ports, at any particular time; and while it is true that all of the oil is of

the same grade, yet, when the time comes to make delivery to the contract purchasers, a separation from stock is just as essential as in the case of a hardware merchant, who must select from a stock of shovels exactly alike, the shovels he has sold to a retail merchant.

Much is made of the alleged practically continuous flow of oil from ship to storage tanks, from storage tanks to tank cars and thence to the bulk stations and consumers, and the movement is painted as a continuous flow of oil in interstate commerce through the tanks to ultimate destination. Conceding the premise, we are again reminded that continuity of movement is not the test in determining the character of the movement. On this particular contention of the defendant the case of Public Utilities Commission of Kansas v. Landon, 249 U. S. 236, is illuminating. In that case the Court held that while piping natural gas from one State to another, and there delivering it to independent local gas companies, is interstate commerce, the movement of the gas by local companies from the point where they [fol. 39] receive it from the pipe line company to their local consumers is intrastate commerce, and not a continuation of the interstate movement, even though the mains of the local companies are permanently connected with those of the pipe line company, and there is no interruption of the flow of the gas from the pipe lines to the mains of the local companies.

The two cases above referred to, and relied upon so strongly by the defendant, do not seem to the Court to be in point.

In the Sabine Tram case the question was, whether or not the shipment of lumber from the mills where it was manufactured at Ruliff, Texas, to Powell & Company, the purchasers, at Sabine, Texas, on the Gulf of Mexico, was an interstate shipment or an intrastate shipment. There, as in every other such case, the question was, what was the essential character of the movement from Ruliff to Sabine, and it became important to know what the intention of Powell & Company was at the time the shipment left Ruliff. The undisputed facts were that Powell & Company was engaged in the purchase of lumber for export to Europe, by way of the port of Sabine; that contracts had been made for the sale of the lumber before the logs out

of which it was manufactured had left the State of Louisiana for the mill at Ruliff, Texas, and before Powell & Company had purchased the lumber from the Sabine Tram Company, it being purchased expressly for export to fill the contracts. Powell & Company had chartered ships to receive the lumber at Sabine, upon its delivery there, before any great part of the lumber had been delivered. At the time it was shipped from the mill it was Powell & Company's intention to have it loaded promptly upon the ships for carriage to Europe. Powell & Company, as had been its intention from the start, claimed for the shipments when they arrived at Sabine the free time allowed for unloading cars carrying freight intended for export, and after the lumber had been unloaded on the railroad company's premises, and before its transfer to the ships, freedom from storage allowed on export shipments. Powell & Company at all times regarded the shipments as export shipments, and viewed the stoppage at Sabine as a necessary incident in transferring the shipments from rail to water carriage. In view of these uncontroverted facts, the Court, of course, came to the conclusion that the movement from Ruliff to Sabine was a part of a continuous foreign movement, and that such was the intention of Powell & Company, who had control of the shipment after its arrival at Sabine, from the very time the initial movement started. It would seem [fol. 40] that the recitation of these facts so clearly distinguishes the Sabine Tram case from the case at bar as to make further comment unnecessary.

In the case of Railroad Commission of Ohio v. Worthington, Receiver, &c., supra, the question was whether or not the Railroad Commission of Ohio had the right to fix the rate at which coal should be carried from certain mining districts in the State of Ohio to the ports of Huron and Cleveland, Ohio, on Lake Erie, for carriage from those points by vessels furnished by the coal operators to points in other States, the rate covering not only the service of carriage from the coal field to the lake ports, but the further service of unloading the coal from the railroad cars into the vessels, and so distributing it in the holds of the vessels as to balance the cargo so that the vessels might proceed safely. The Court stated the question involved in the following language:

"Does the transportation which the rate prescribed by the Railroad Commission of Ohio covers constitute interstate commerce?"

It was held that the actual placing of the coal in the vessel (and the distribution of it in the hold of the vessel), in cases where the cargo was intended for carriage outside of the State of Ohio, were acts connected with, and a part of the interstate movement of the cargo, and that the attempt of the Railroad Commission of Ohio to regulate this charge was an interference with, and burden upon interstate commerce.

In the case at bar, as has been pointed out, the local movements from plaintiff's storage facilities to other points in Florida are not the preconceived parts of the interstate movements beginning at the refineries and at Tampico, but are separate and distinct movements, arranged for and commenced after the termination of the intrastate movements.

Numerous other cases are thought by plaintiff and defendant to be applicable to the case at bar, but in each of those cases, except the cases of Atlantic Coast Line R. R. Co. v. Standard Oil Co. of New Jersey and Seaboard Air Line Ry. Co. v. Standard Oil Co. of New Jersey, heard and decided together by the Circuit Court of Appeals for the Fourth Circuit on April 14, 1926, and which were decided in accordance with the views herein expressed, the facts were essentially different from those in the case at bar, and [fol. 41] therefore no useful purpose will be served in reviewing them at length.

For the reason stated, the Court is of opinion that the movements in question in this case are intrastate movements and should take the intrastate rates.

Inasmuch as the parties have indicated that the question of accounting probably can be agreed upon, the appointment of a Special Master to state the account between the parties will be left open, and the entry of a decree conforming to the views herein expressed will be held open pending such agreement, or notice that agreement can not be arrived at.

Chas. I. Dawson, Judge.

June 10, 1926.

Chas. G. Middleton, Humphrey, Crawford & Middleton, of Louisville, Ky., Attorneys for Plaintiff.

Helm Bruce, Bruce & Bullitt, of Louisville, Ky.; Thos. W. Davis, of Wilmington, N. C., Attorneys for Defendant.

IN UNITED STATES DISTRICT COURT

FINAL DECREE—June 25, 1926

This cause coming on to be heard upon the pleadings and evidence introduced by affidavit and orally and having been heard and submitted in chief, and the Court being duly advised having delivered and filed herein as part of the record herein a written opinion expressing its views, and the Court being of the opinion that the complainant is entitled to the relief prayed for in its bill, it is hereby ordered, decreed and adjudged as follows;

[fol. 42] 1. That the defendant Atlantic Coast Line Railroad Company, its officers, agents, servants and employes, be and they hereby are perpetually enjoined from charging the complainant or imposing upon it for the transportation of its products or any of them between Port Tampa, Tampa and Jacksonville, all in the State of Florida, to other points within the said State of Florida over routes lying wholly within the said State rates other than or higher than its lawfully published rates for the transportation of such products in intrastate commerce within the State of Florida.

2. That the complainant, Standard Oil Company, recover from the defendant, Atlantic Coast Line Railroad Company, any and all such sums of money as the defendant has collected and received from the complainant or on its behalf in excess of said lawfully established rates or charges for intrastate transportation of said products or commodities over the lines of the defendant within the State of Florida, together with interest on such sums at the rate of six per cent per annum computed from the first day of the calendar month immediately following the month in which such excess charges were paid by or on behalf of said complainant to said defendant.

3. It is further ordered, adjudged and decreed that the complainant and the defendant herein be given sixty days in which to agree upon the correct amount of said excess charges, and that, if the complainant and defendant shall fail or be unable to agree upon the amount within said sixty days, then the Court will hereafter order that the cause be referred to a Special Master for the sole and only purpose of ascertaining the correct amount of said excess charges imposed upon the complainant and paid by it or on its behalf.

5. That the complainant recover of the defendant the costs of this action to be taxed by the Clerk of this Court.

6. Subject to the possible necessity for reference as before mentioned to ascertain the amount due complainant, this shall be considered the final decree herein.

Chas. I. Dawson, Judge.

June 25, 1926.

[fol. 43] IN UNITED STATES DISTRICT COURT

ORDER ALLOWING APPEAL—June 25, 1926

This day came the parties hereto and defendant, The Atlantic Coast Line Railroad Company, in open Court, prayed an appeal to the United States Circuit Court of Appeals for the Sixth Circuit from the decree entered herein on the 25th day of June, 1926, and at the same time filed its assignment of errors upon which said appeal is based, which appeal is hereby allowed. Plaintiff, The Standard Oil Company of Kentucky, waived the issue of citation and entered its appearance to said appeal.

Said defendant also moved the Court to suspend the operation and execution of said decree pending the appeal from it, which motion the Court sustained, and it is, therefore, ordered that the operation and execution of said decree be, and it is, suspended pending said appeal and until the determination thereof.

The amount of the appeal bond is fixed at the sum of $500.00. Whereupon said defendant produced and filed an appeal bond in the form provided for such cases in the sum of $500.00, with Fidelity & Deposit Company of Maryland

as surety thereon, which bond was approved and so endorsed and filed.

Chas. I. Dawson, Judge.

June 25, 1926.

IN UNITED STATES DISTRICT COURT

ASSIGNMENTS OF ERROR—Filed June 25, 1926

Defendant, Atlantic Coast Line Railroad Company, assigns as errors of the Court in the above styled cause the following, to wit:

1. In holding that plaintiff has no adequate remedy at law for the alleged injuries complained of in its bill of complaint, and, therefore, that equity has jurisdiction of the cause.

[fol. 44] 2. In holding that the commerce described in plaintiff's bill, to wit, transportation of plaintiffs's products between Port Tampa, Tampa and Jacksonville in the state rates upon the products or commodities of plaintiff upon which were charged and collected the rates complained of, was and is intrastate commerce, upon which, therefore, the intrastate rates fixed by the Florida Railroad Commission should have been charged, and in enjoining the Atlantic Coast Line Railroad Company from charging its law fully published interstate rates upon such commerce.

3. In decreeing that the defendant, Atlantic Coast Line Railroad Company, shall pay to the plaintiff, Standard Oil Company, such sums of money as have been collected and received by defendant from plaintiff in excess of the intrastate rates upon the products or commodities of plaintiff transported over defendant's lines within the State of Florida.

4. In decreeing that interest be paid by defendant to plaintiff upon the excess charged and received by defendant from plaintiff for the transportation of said commodities over and above the intrastate rates for transportation of same.

5. In decreeing that plaintiff recover of defendant plaintiff's costs herein expended.

6. In refusing to dismiss the bill of complaint.

Wherefore, defendant, Atlantic Coast Line Railroad Company, prays that the decree aforesaid be reversed.

Thos. W. Davis, Bruce & Bullitt, Counsel for Defendant.

[fol. 45] Bond on appeal for $500.00, approved and filed June 25, 1926, omitted in printing.

[fol. 46] In United States District Court

Order Filing and Approving Statement of Evidence—July 8, 1926

This day came defendant and filed its Statement of Evidence under Equity Rule No. 75, and plaintiff having been notified of the presentation of this to the Court, and having stated that it has no objection to the same, the said statement was approved by the Court and filed.

Bruce & Bullitt, Attys. for Deft.

Enter July 8, 1926.

O. K. Chas. G. Middleton, Solicitor for Complainant.

In United States District Court

Statement of Evidence—Filed July 8, 1926

Upon the trial of this cause on April 7, 1926, before the Court, the following evidence was introduced:

W. G. Violet

W. G. Violet, introduced by plaintiff, testified as follows:

My name is W. G. Violet. I am Vice-President of the Standard Oil Company of Kentucky and have been such

since 1904. I am familiar with the Company's methods of handling its business in the State of Florida. The Standard Oil Company of Kentucky does not own any production of oil. It purchases its supply on the open market.

It purchases its fuel oil from the Standard Oil Company of New Jersey.

Most of its gasoline, refined oil, lubricating oil, gas oil and light oil is purchased from the Standard Oil Company of Louisiana. But it makes some few purchases of these [fol. 47] commodities from other Companies, such as the Vacuum Oil Company, from which it purchases Mobile oils.

Plaintiff receives its refined oil, gasoline and fuel oil largely by boat-load shipments into the port of Tampa, Florida, and St. Johns River Terminals at Jacksonville, Florida, at which two places it has large storage tanks.

Referring to the gasoline, refined oil and lubricating oil which is received in the Company's tanks at Port Tampa, we receive at the Home Office in Louisville, Kentucky, weekly inventories from our Jacksonville manager, showing the stock in our storage tanks at Port Tampa. From the information given on these inventories, we calculate, as best we can, if and when we should order different supplies based upon the best calculation we can make as to our future requirements, and especially market conditions, whether or not the general market conditions at primary points would indicate that it was advisable to increase our stock or decrease our stock. These orders are placed with the Standard Oil Company of Louisiana by our office, designating the approximate time when the delivery should be made. They acknowledge receipt of that order. The shipment is made. Upon arrival of the boat at Port Tampa, it is pumped by the ship pump through pipe lines into our storage.

I do not know whether the ships just referred to are the property of the Standard Oil Company of Louisiana or not. They are probably chartered. We have nothing to do with that. The goods don't become our property until pumped.

Counsel for defendant here objected that the witness was simply stating the law, and the Court instructed the witness just to tell what was done. Whereupon it was suggested that plaintiff has a contract with the Standard Oil Com-

pany of Louisiana, to which the witness answered, "We have the contract of invoice."

At this point the following occurred:

"By Mr. Bruce, counsel for defendant: Mr. Violet said the title did not pass. We object to that statement. It may hereafter become material and I think that question should be determined by the contract between the parties.

"Witness: We have no contract covering purchases of refined oil or gasoline.

"By Mr. Middleton: Just tell how they are handled."

[fol. 48] The witness then proceeded:

"Those are purchased on the open market and the price we pay is the current market in effect at the time those goods are unloaded into our storage tanks at Port Tampa. Each shipment is a separate contract. The quantity loaded on the ship at the refinery has nothing to do with the quantity which we pay for. There is no written contract between the Standard Oil Company of Kentucky and the Standard Oil Company of Louisiana covering a year's supply of gasoline."

A typical case of how an order by plaintiff to the Standard Oil Company of Louisiana is given and handled when plaintiff needs a carload of gasoline is shown by the following correspondence:

"December 23, 1924.

Mr. J. A. Moffett, Jr., 26 Broadway, New York City.

Dear Sir: I am attaching our order No. 25260 for second cargo in January to be delivered by the S-S Polarine to Jacksonville, Fla.

Attached also is order No. 25259 for loading of the S-S Waring at Baton Rouge about Jan. 13th for Port Tampa, Fla.

Will appreciate your acknowledging receipt of both of these orders.

Yours truly."

There is nothing in the order about price. The order says:

"50,000 bbls. (50s) Motor Gasoline, Florida Test
200 bbls. (50s) Polarine Medium
200 bbls. (50s) Polarine Heavy
6,000 bbls. (50s) Gas Oil—purchase No. 48
1,500 bbls. (42s) 20-22 Fuel Oil—purchase No. 43."

That letter and order are acknowledged on December 26th, as follows:

[fol. 49] "December 26th, 1924.

Mr. S. W. Coons, President Standard Oil Co. of Kentucky, Louisville, Kentucky.

DEAR SIR: I beg to acknowledge with thanks your letter of December 23rd enclosing the following orders:

No. 25259 for loading the s-s "O. T. Waring" at Baton Rouge about January 13th for discharge at Port Tampa, Fla., as follows:

50,000	bbls.	(50s) Motor Gasoline, Florida Test
200	"	" Polarine Medium
200	"	" Polarine Heavy
6,000	"	" Gas Oil—Purchase No. 48
1,500	"	(42s) 20-22 Fuel Oil—purchase No. 43.

No. 25260 for loading the s-s "Polarine" at Baton Rouge about January 25th for discharge at Jacksonville, Fla., as follows:

40,000 bbls. (50s) Motor Gasoline, Florida Test.

I am wiring these orders to the Refinery today.

Yours very truly, J. A. Moffett."

(Tr. of Evidence 7.)

The refinery is located at Baton Rouge, Louisiana.

The gasoline that appears on the invoice is loaded on the boat at Baton Rouge and they mail us a memoradum invoice indicating simply by their records, as I understand it, the quantities loaded.

The boat arrives at Port Tampa. Before it starts to discharge, a representative of the Standard Oil Company

of Kentucky and a representative of the Standard Oil Company of Louisiana check the measurements in the storage tanks. Then when the boat is discharged, they again check the measurements and the difference between these two measurements of the gasoline in our tanks at Port Tampa signed by both our representatives and the representative of the seller constitute the basis for invoice.

The Standard Oil Company of Kentucky pays on the quantity that is pumped into our tanks at Port Tampa, as this invoice shows. This invoice shows what their records [fol. 50] are as regards the quantity loaded at Baton Rouge and right under that it says "should be" and these revised quantities check with the quantities that we and their representatives agree were unloaded from the boat. In other words, the representatives of the two Companies, when the stuff is pumped into the tanks at Port Tampa, give the two Companies information with which to correct the original invoice. This out-turn of cargo is signed by our representative and the representative of the Standard Oil Company of Louisiana.

The price is the current market in effect after the cargo is discharged. I am talking about refined oil and gasoline.

In other words, we order a cargo May 1st and it leaves Baton Rouge May 15th, but is not pumped into the Port Tampa tanks until May 20th. May 20th governs the price, because the gasoline does not belong to us until it is pumped into the tank at Port Tampa.

Counsel for defendant here objected to the statement as to the passage of title, to which counsel for plaintiff responded, "There is no written contract."

Here the witness started to state what the understanding of the parties is as to when the goods became the property of the plaintiff, to which counsel for defendant objected, and the following question was asked by the Court:

"By the Court: Your contract was that this stuff was to be delivered to your Company in the tank at Port Tampa and Jacksonville respectively?

"By the Witness: Yes, sir; and those invoices show that."

The witness then proceeded:

I do not know whether the cargo from Baton Rouge to Port Tampa or Jacksonville is insured or not. We do not insure it.

I do not know anything about the chartering or the owning of the boat which carries the goods.

The witness here filed as Exhibit No. 2 an invoice of December 31, 1925 which is as follows:

[fol. 51] PLAINTIFF'S EXHIBIT No. 2

Standard Oil Company of Louisiana, General Office

Standard Oil Company, Inc., Louisville, Ky., for Account of State of ——, Baton Rouge, La., December 31*th*, 1925

Order Date: —— —, ——.

Item No.	Order: B. R.	Order: Station	Order: Sales	Date shipped	Consigned and destination	Product	Freight	Amount
					Brought Forward		3,579.76	3,238,193.93
1					We today charge your account adjusting Gallonage on Cargo delivered to the S/S "O. T. Waring" at Refinery Docks Dec. 19 & 20, 1925 for discharge at Jacksonville, Fla. and covered by our Invoice #89, Item #2, dated 12/21/25, as follows: Also charging Fuel Oil delivered.			

As billed:

	@ 65°			
Deodorized Gasoline	2,204,479	.11	$242,492.69	
	@ 60°			
Gas Oil	231,792	.045	10,430.64	
Atlantic Red Engine	15,034	.105	1,578.57	
Polarine Oil Medium	74,944	.245	18,361.28	
Polarine Oil Heavy	49,925	.245	12,231.63	
Polarine Oil Heavy X	50,056	.325	16,268.20	
# Fuel Oil	.....	.....	.....	
				$301,363.01

Should be:

	@ 65°		
Deodorized Gasoline	2,201,793	.11	$242,197.23
	@ 60°		
Gas Oil	229,511	.045	10,328.00
Atlantic Red Engine Oil	14,683	.105	1,541.72
Polarine Oil Medium	75,270	.245	18,441.15

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PLAINTIFF'S EXHIBIT No. 2—Continued

Item No.	Order B. R.	Order Station	Order Sales	Date shipped	Consigned and destination			Product	Freight	Amount
Polarine Oil Heavy					48,838	.245	11,965.31			
Polarine Oil Heavy X					49,315	.325	16,027.38			
♯ Fuel Oil					36,770	.038333	1,409.50			
								$301,910.29		547.28
									3,579.76	3,238,741.21

Mr. Saul:

Jany. 4/26.

Please bill as of December 1925, the following cargo, as discharged by S. S. O. T. Waring, at Jacksonville, Fla.—December 25, 26/25. Invoice for S. O. Co. of La. to be received later.

2202152—gals. Gasoline
37388— " Light Gravity Fuel Oil.
229891— " Gas Oil.
48838— " Polarine Oil Heavy.
75651— " " Medium.
49315— " " Heavy X.
14744— " " Atlantic Red

Inv. No. 198.
Jan. 4, 1926.
Sta. Jacksonville.

♯ To apply on Purchase ♯71.

[fol. 52] The Company purchases its crude oil from the Standard Oil Company of New Jersey, which in turn gets its crude oil in Mexico. There is a written contract covering the purchase of fuel oil, and I file it herewith marked "Plaintiff's Exhibit No. 3." It is as follows:

PLAINTIFF'S EXHIBIT No. 3

An Agreement made this 25th day of October, 1924, between the Standard Oil Company, a corporation organized under the laws of the State of New Jersey, hereinafter called the Seller, and the Standard Oil Company, a corporation organized under the laws of the State of Kentucky, hereinafter called the Buyer, whereby it is agreed as follows:

Quantity

1. Seller agrees to sell and deliver at Port Tampa, Key West, or Jacksonville, Buyer's option, and Buyer agrees to purchase and receive one million (1,000,000) Barrels, 10% more or less, Buyer's option of 42 U. S. Standard gallons each at sixty degreed (60°) Fahrenheit of oil as per specifications given in Article 5.

Delivery

2. Deliveries to be made in cargo lots over a period of one year from January 1, 1925, in fairly even monthly quantities.

Price

3. Price to be paid to the Seller One Dollar Twenty Nine Cents ($1.29) U. S. Gold per barrel of 42 U. S. Standard gallons, c. i. f. Port Tampa or Key West, Fla., and One Dollar Thirty-Five Cents ($1.35) U. S. Gold per barrel of 42 U. S. standard gallons c. i. f. Jacksonville, Florida, plus any taxes payable to the Mexican Government on the oil delivered hereunder in excess of the equivalent of Nineteen Cents (19¢) U. S. Gold per barrel of 42 U. S. Standard gallons. Should the aforementioned taxes be less than Nineteen (19¢) Cents U. S. Gold per barrel of 42 U. S. standard gallons, the price for deliveries hereunder to be reduced by the amount by which such taxes are less than

19¢ per barrel. Payment to be made on the basis of the quantity loaded at loading port as ascertained by Messrs. Charles Martin & Co.'s representative.

[fol. 53] Payment

4. Payment for all oil delivered in each month shall be made not later than the fifteenth of the succeeding month, such payment to be made in New York funds or exchange to the credit of the Seller at its office in New York.

Specifications, Tests and Inspection Certificates

5. The oil shall be Mexican Crude Oil of a gravity not heavier than eleven and five tenth degrees (11.5°) A. P. I at sixty degrees (60°) Fahrenheit. If the oil tendered for delivery by the Seller shall contain more than three per-cent (3%) in volume of water and/or foreign matter, Buyer shall not be required to accept the same. All measurements of quantities and test for the quality of the oil and for water and/or foreign matter contained therein shall be made at Buyer's expense by a representative of Messrs. Chas. Martin & Co., Oil Inspectors, appointed by the New York Produce Exchange and shall be made in the shore tanks at the port of loading, before loading is begun. Such inspector shall issue a certificate both as to quantity and quality of the oil delivered and as to the amount of water and/or foreign matter contained therein, which certificate shall be accepted by both parties as conclusive evidence of the quantity and quality of the oil delivered and of the water and/or foreign matter contained therein.

No deduction in the volume of oil to be paid for shall be made for water and/or foreign matter contained therein unless the amount of same shall exceed one per cent (1%) in which latter event deduction shall be made for any excess over one per cent (1%).

The net quantity of the oil delivered shall be determined on the basis of volume of sixty degrees (60°) Fahrenheit.

An adjustment for variation in volume due to difference in temperature above or below the standard of sixty degrees (60°) Fahrenheit shall be made by a deduction of .035% (35/1000 of 1%) for each degree above sixty degrees (60°) Fahrenheit, or by any addition of .035%

(35/1000 of 1%) of each degree below sixty degrees (60°) Fahrenheit.

[fol. 54] The oil shall be tested by taking three (3) pint samples from each of the tanks from which the oil is to be delivered, one pint from the top third, one pint from the middle third, and one pint from the bottom third of the oil contained in the tank; this after the water has been drawn from the tank down to a point where water will not enter the suction line while delivery is being made. These three (3) pint samples shall be thoroughly mixed and then a sample taken therefrom shall be tested. The water and/or foreign matter shall then be determined by Method No. 300.3 Bureau of Mines Technical Paper No. 323, pages 67/69.

Demurrage, etc.

Demurrage incurred in the discharge of steamers making delivery of the oil hereby sold, shall be at the rates of and in the manner specified in the "revised dispatch and demurrage schedule for tank steamers owned and/or operated by the Standard Oil Company (N. J.)" effective March 15, 1924, which said revised schedule is annexed hereto and hereby made a part of this contract as if set forth in full herein.

Buyer guarantees to provide a safe berth for steamers to discharge at Port Tampa, Key West or Jacksonville where there will not be less than Twenty-four (24) feet of water in berths, and approaching it, and where the steamers can lie alongside, discharge there always afloat and always leave without any undue risk, said berth to be available immediately after vessel reports ready to discharge.

If the Buyer is able to provide a safe berth for steamers to discharge at Jacksonville where there will be not less than 26 feet of water in depth approaching it and where the steamers can lie along side, discharge there, always afloat and always leave without any undue risk and the Buyer will receive cargo lots of at least 60,000 bbls., then the price for deliveries at Jacksonville shall be reduced to 3¢ per bbl.

[fol. 55] Force Majeure

If the fulfillment of any of the terms and provisions hereof shall be delayed or prevented by revolution or other

disorders, war, acts of enemies, strikes, lockouts, fires, floods, Acts of God, arrest or restrain of princes, rulers or peoples, perils of the sea, accidents of navigation, breakdown of or injury to ships, expropriation or confiscation of the properties which constitute Seller's facilities for receiving, producing, manufacturing, handling, transporting or delivering oil hereunder, or without limiting the foregoing, by any other cause not within the control of the party whose performance is interferred with and which by the exercise of reasonable diligence said party is unable to prevent, whether of the class of causes hereinbefore enumerated or not, no liability for damage shall arise against said party on account of such delay or prevention.

Delivery by the Seller of the quantity sold hereunder is dependent upon and coincident with the daily production of the wells of the Compania Transcontinental de Petroleo, S. A. producing in the Panuco and Cacalilac fields being at the rate of 60,000 barrels or over of oil of the quality sold hereunder and likewise upon the Seller receiving from the International Petroleum Company a minimum daily quantity of 30,000 barrels of this grade of Crude.

If for any day during the continuance of this contract the production of the aforementioned wells falls below 60,000 barrels per day or the Seller fails to receive from the International Petroleum Company 30,000 barrels per day, the Seller but not the Buyer shall have the option to reduce the quantity contracted to be sold under this contract by an amount calculated on the same proportional basis as the amount of production obtained plus the oil received from the International bears to 90,000 barrels and such proportionate reduction in the deliveries shall at Seller's option fix the total quantity deliverable hereunder at the resultant decreased amount.

[fol. 56] In Witness Whereof the parties hereto have caused these presents to be duly executed in duplicate the day and year first above written.

Standard Oil Company (New Jersey), by A. C. Bidford, Chairman of the Board. Standard Oil Company (Kentucky), by W. E. Smith, Vice President.

Attest: M. H. Eames, Asst. Secretary. (Seal.)

The initials "C. I. F." stand for Cost, Insurance and Freight.

The capacity of storage tanks at Port Tampa for refined oil, gasoline and fuel oil is approximately 250,000 barrels, divided as follows:

Refined oil 2 tanks total	19,635 bbls.
Gasoline 5 storage tanks total capacity	104,505 bbls.
Fuel oil, all grades, total 7 storage tanks	125,829 bbls.

Refined oil and gasoline are figured at 50 gallons to the barrel. Fuel oil at 42 gallons to the barrel. That is the usage in the oil industry.

At St. Johns River Terminal, Jacksonville, we have storage tanks of the following capacities:

Refined oil 2 storage tanks totalling	40,600 bbls.
Gasoline 5 storage tanks totalling	162,500 bbls.
Lubricating oil 5 storage tanks	20,811 bbls.
Fuel Oil, all grades, totalling 7 storage tanks	145,900 bbls.
Total approximately	369,100 bbls.

The capacity of the average steamer that serves these ports is approximately 45,000 barrels, but they vary.

The total tank capacity at both ports, Jacksonville and Port Tampa, is approximately 619,000 barrels.

Our sales of refined oil at points supplied from Port Tampa for the first six months of 1925 average 8,600 barrels per month, and of gasoline approximately 48,700 barrels per month.

[fol. 57] Sales of refined oil for the same period at Florida points supplied from the St. Johns River Terminal at Jacksonville were approximately 8,500 barrels per month for refined oil and 44,400 barrels of gasoline.

Our average monthly sales of refined oil and gasoline from Port Tampa and Jacksonville for the first six months in 1925 were about 110,000 barrels.

The considerations which are important for the Company in determining the size of tankage capacity at a port are the physical conditions, prospective amount of business and a certain leaway that will enable us to increase

materially stocks under certain market conditions. We try to increase stock when we believe prices will advance. And when we think prices are going down, we allow stocks to run down. Our stocks vary at those ports. The following illustrations will explain our method:

In April, May and June 1925 markets on gasoline generally were advancing, and during that period we received at Port Tampa and Jacksonville approximately 408,600 barrels of gasoline. During the same three months we shipped out of those two terminal stations only 333,000 barrels of gasoline. It quite often happens that while conserving our stock, say of gasoline at Jacksonville tankage or Port Tampa tankage, purchases are made of a supply for certain places shipped but directly from refineries.

On the other hand, in July, August and September, 1925, the gasoline market at primary points, refinery centers, were being reduced. We received by boat at Port Tampa and Jacksonville during that period, July, August and September, 1925, approximately 210,200 barrels of gasoline, but we shipped out from those two terminal stations during the same three months approximately 400,000 barrels. The consequence of that was that on June 30th, on the 1st day of July, we had approximately 223,000 barrels of gasoline on hand at Port Tampa and Jacksonville, but at the end of September we only had 42,000 barrels.

It would not be possible for the Standard Oil Company of Kentucky to conduct its business with tanks at those two ports of sufficient size only to transfer cargoes from boat to rail. We use these tanks to take advantage of market conditions. In that way we make an inventory profit on the stuff we buy, and sometimes we make a loss.

Referring now to lubricating oil: It is received in cargoes along with refined oil and gasoline and pumped direct from the ship into tank cars for the reason that so far [fol. 58] we have no storage at Port Tampa for lubricating oil. After it is pumped into the tank cars, most of it is shipped to Tampa, Florida. It is sold in the general grades of business and hauled out by tank trucks, filled into barrels, and some is reloaded into tank cars at Tampa and shipped. The barreling at Tampa averages about 600 barrels per month.

Referring now to the same commodity at Jacksonville: We now have at the St. Johns River Terminals at Jack-

sonville a total of 5 storage tanks for lubricating oil. These lubricating oils come to Jacksonville in the same manner as to Tampa, but instead of being pumped into tank cars are pumped into storage tanks located on the St. Johns River Terminal and are there reloaded and sent to Jacksonville or other stations.

Kings Road station at Jacksonville is our marketing station for lubricating oil for Jacksonville and immediate vicinities. That is where we operate our trucks, have a warehouse and fill barrels, and the lubricating oil arriving at what we term the Kings Road plant is pumped from the tank cars into the storage tanks we have there the same as we have at Tampa, and it is then distributed to our customers by tank trucks or in barrels.

We do not do any barreling at St. Johns River Terminal. At Kings Road we barrel about 3,500 barrels of lubricating oil per month.

Lubricating oil is purchased under the same character of contract as gasoline at the primary points.

Referring to bulk stations: At bulk stations we have smaller storage tanks, garages and agents and certain facilities to sell it. We have 123 of these bulk marketing stations in Florida.

We have 165 drive-in service stations in Florida.

I estimate that we have approximately 5,000 gasoline dealers, to whom we deliver gasoline by tank wagons.

At this point the following examination and proceedings occurred:

"Q. Are all of those bulk stations and service stations and dealers supplied with those products from the two ports which you have described?

A. In a majority of cases.

Q. Where else do they get supplies?

A. Tank cars directly from refineries.

Q. Is that exceptional or not?

A. It depends on market conditions.

[fol. 59] Q. State the market conditions under which you would supply a customer with a tank car in Orlando, Florida or some other such point?

By Major Davis, counsel for defendant: I submit that has nothing to do with this case.

The Court: I don't see that either. The question is what rate this stuff should take from Port Tampa and Jacksonville.

Mr. Middleton, counsel for plaintiff: It has this bearing——

The Court (interrupting): It might throw light on the way they conduct their business.

Mr. Middleton: Yes.

The Court: I understand that he brings in tank cars from other points only when the market conditions justify them in conserving stock.

Mr. Middleton: That is correct, but it is true in a large measure that the bulk station and the service stations and the dealers are supplied through these two ports."

The witness then proceeded: Leaving out of consideration for the present fuel oil, we have no contracts for oil, with one or two exceptions, isolated cases, with our customers of refined oil or gasoline. Our customers are shifting. We are losing them and gaining them each day. We hold these products subject to the demands of our customers and business. The volume of business shifts with the seasons of the year and in the different departments. Take, for instance, refined oil. On our sales in Florida for the year 1925 in February we had a loss of practically 9% in our sales of refined oil (which is the same as coal oil), by which I mean that this was the percentage of loss over the same month for the previous year. In March, the following month, the loss was 3.7%. April came along with a gain of practically 10%. There was a gain in May of 10%. June came along with a gain of 27%. July comes along with a gain of about 15%. In other words, there is no regularity at all in our business.

On gasoline, March showed a gain of approximately 20%. April showed a gain of 19%. May showed a gain of 27%. June a gain of 26%. July a gain of 44%.

"By Major Davis: You don't call February there?

A. I didn't call February in either instance."

I have prepared a monthly inventory of the receipts of fire proof oil, which is refined oil, and gasoline for [fol. 60] 1925 at Port Tampa in 50 gallon barrels. The inventory shows monthly receipts and shipments. I will

call attention to a few months and then file the entire statement. On December 31, 1924 our inventory of refined oil at Port Tampa was 16,709 barrels. During January we received nothing, but we shipped out 8,780 barrels. On April 30th our inventory was 12,258 barrels. We received during the month of May 11,087 barrels and we shipped out only 7,773 barrels. All of these barrels were 50 gallon barrels.

I have the same information on all of the products and I file the statement for all the products, marked "Plaintiff's Exhibit No. 4."

In explanation of this statement, I may say that the statement refers to the consumption of fire proof oil. That is refined oil or kerosene. The "gas oil" is a light fuel oil and is handled the same way as gasoline and the other products. Crown gasoline is our trade name for gasoline. What is referred to in the statement as 20.22 gravity oil is a light fuel oil and gas oil is a lighter fuel oil. Heavy fuel oil is approximately 11. gravity.

The statement (Plaintiff's Exhibit No. 4) is as follows:

PLAINTIFF'S EXHIBIT 4

Standard Oil Company, Incorporated

Monthly Inventory and Receipts Fire Proof Oil and Crown Gasoline Year 1925, Port Tampa, Fla.

(All 50-gal. bbls.)

	Fire-proof oil	Crown gasoline
Inventory Dec. 31, 1924	16709 bbls.	75107 bbls.
Receipts month of Jan. 1925		45662 "
Available stock month of Jan. 1925	16709 bbls.	120769 bbls.
Shipments month of Jan. 1925	8780 "	58406 "
Inventory Jan. 31, 1925	7908 bbls.	62285 bbls.
Receipts month of Feb. 1925	9877 "	33892 "
Available stock month of Feb. 1925	17785 "	96177 "
Shipments month of Feb. 1925	8047 "	49948 "

	Fire-proof oil	Crown gasoline
[fol. 61] Inventory Feb. 28, 1925	8864 bbls.	46385 bbls.
Receipts month March 1925	10014 "	76015 "
Available stock month of March 1925	18878 "	122400 "
Shipments month of March, 1925	9184 "	50901 "
Inventory March 31, 1925	9748 bbls.	71347 bbls.
Receipts month of April 1925	10274 "	30835 "
Available stock month of April 1925	20022 "	102182 "
Shipments month of April 1925	7861 "	44826 "
Inventory April 30, 1925	12258 bbls.	57601 bbls.
Receipts month of May 1925	11087 "	69791 "
Available stock month of May 1925	23345 "	127392 "
Shipments month of May 1925	7773 "	44698 "
Inventory May 31, 1925	15680 bbls.	83268 bbls.
Receipts month of June 1925		42046 "
Available stock month of June 1925	15680 "	125314 "
Shipments month of June 1925	6970 "	50578 "
Inventory June 30, 1925	8736 bbls.	75317 bbls.
Receipts month of July 1925	5389 "	15693 "
Available stock month of July 1925	14125 "	91010 "
Shipments month of July 1925	7441 "	54719 "
Inventory July 31, 1925	6736 bbls.	36382 bbls.
Receipts month of August 1925	11069 "	74437 "
Available stock month of Aug. 1925	17805 "	110819 "
Shipments month of Aug. 1925	5606 "	49172 "
Inventory Aug. 31, 1925	12357 bbls.	62396 bbls.
Receipts month of Sept. 1925		

	Fire-proof oil	Crown gasoline
Available stock month of Sept. 1925	12357 "	62396 "
Shipments month of Sept. 1925	12210 "	50955 "
[fol. 62] Inventory Sept. 30, 1925	260 bbls.	11277 bbls.
Receipts month of Oct. 1925	22201 "	105652 "
Available stock month of Oct. 1925	22461 "	116929 "
Shipments month of Oct. 1925	8284 "	74141 "
Inventory Oct. 31, 1925	14551 bbls.	48471 bbls.
Receipts month of Nov. 1925	5611 "	81096 "
Available stock month of Nov. 1925	20162 "	129567 "
Shipments month of Nov. 1925	14231 "	78213 "
Inventory Nov. 30, 1925	5712 bbls.	46537 bbls.
Receipts month of Dec. 1925	14823 "	72149 "
Available stock month of Dec. 1925	20535 "	118686 "
Shipments month of Dec. 1925	16677 "	88862 "
Inventory Dec. 31, 1925	3890 bbls.	32735 bbls.

Tankage—Port Tampa plant:

# 3—	Oil	14,587 bbls.
#10—	"	5,048 "
	Total	19,635 "
# 7—	Gasoline	10,111 bbls.
# 9—	"	9,762 "
#12—	"	22,316 "
#13—	"	22,316 "
#14—	"	40,000 "
	Total	104,505 "

[fol. 63] Standard Oil Company (Ky.)

Monthly Inventory and Receipts Heavy Fuel Oil Year 1925, Port Tampa, Fla.

(All in 42-gallon Barrels)

Inventory, Dec. 31, 1924	58,837	bbls.
Receipts during month of January, 1925	98,912	"
Available Stocks for January, 1925	157,749	"
Shipments during month of Jan. 1925	73,603	"
	844,146	"
Inventory, Jan. 31, 1925	86,516	bbls.
Receipts during month of February, 1925	52,006	"
Available Stocks for February, 1925	138,522	"
Shipments during month of Feb. 1925	82,523	"
	55,999	"
Inventory, Feb. 28, 1925	57,353	bbls.
Receipts during month of March, 1925	97,583	"
Available Stocks for March, 1925	154,936	"
Shipments during month of March, 1925	80,598	"
	74,338	"
Inventory, March 31, 1925	76,410	bbls.
Receipts during month of April, 1925	97,383	"
Available Stocks for April, 1925	173,793	"
Shipments during month of April, 1925	70,708	"
	103,085	"
Inventory, April 30, 1925	105,084	bbls.
Receipts during month of May, 1925	44,729	"
Available Stocks for May, 1925	149,813	"
Shipments during month of May, 1925	73,888	"
	75,925	"

[fol. 64] Inventory, May 31, 1925	76,572	bbls.
Receipts during month of June, 1925	42,685	"
Available Stocks for June, 1925	119,257	"
Shipments during month of June, 1925	79,891	"
	39,366	"
Inventory, June 30, 1925	40,849	bbls.
Receipts during month of July, 1925	93,640	"
Available Stocks for July, 1925	134,489	"
Shipments during month of July, 1925	76,014	"
	58,475	"
Inventory, July 31, 1925	60,382	bbls.
Receipts during month of August, 1925	95,938	"
Available Stocks for August, 1925	156,320	"
Shipments during month of August, 1925	82,737	"
	73,583	"
Inventory, August 31, 1925	75,220	bbls.
Receipts during month of September, 1925	91,360	"
Available Stocks for Sept., 1925	166,580	"
Shipments during month of September, 1925	74,173	"
	92,407	"
Inventory, Sept. 30, 1925	94,370	bbls.
Receipts during month of October, 1925	47,199	"
Available Stocks for Oct., 1925	141,569	"
Shipments during month of Oct., 1925	88,203	"
	53,363	"

Inventory, Oct. 30, 1925	57,695 bbls.
Receipts during month of November, 1925	90,965 "
Available Stocks for November, 1925	148,660 "
Shipments during month of November, 1925	99,919 "
	48,741 "
[fol. 65] Inventory, November 30, 1925	47,836 bbls.
Receipts during month of December, 1925	95,401 "
Available Stocks for December, 1925	143,237 "
Shipments during month of December, 1925	109,365 "
	33,872 "

Standard Oil Company (Ky.)

Monthly Inventory and Receipts Gas Oil and 20/22 Gravity Fuel Oil Year 1925, Port Tampa, Fla.

(All in 50-gallon Barrels)

	Gas oil 20/22	Grvty. fuel
Inventory, Dec. 31, 1924	12,472 bbl.	4,312 bbl.
Receipts during month of January, 1925	5,932 "	1,459 "
Available Stocks for January, 1925	18,404 "	5,771 "
Shipments during month of January, 1925	8,675 "	2,604 "
	9,729 "	3,167 "
Inventory, January 31, 1925	9,646 bbl.	3,265 bbl.
Receipts during month of February, 1925	5,865 "	1,806 "
Available Stocks for February, 1925	15,511 "	5,071 "
Shipments during month of February, 1925	9,102 "	3,182 "
	6,409 "	1,889 "

	Gas oil 20/22	Grvty. fuel
Inventory, February 28, 1925	6,302 bbl.	2,038 bbl.
Receipts during month of March, 1925	12,270 "	3,817 "
Available Stocks for March, 1925	18,572 "	5,855 "
Shipments during month of March, 1925	8,979 "	3,691 "
	9,593 "	2,164 "
Inventory, March 31, 1925	9,548 bbl.	2,295 bbl.
Receipts during month of April, 1925	6,331 "	2,099 "
Available Stocks for April, 1925	15,879 "	4,394 "
Shipments during month of April, 1925	6,967 "	2,634 "
	8,912 "	1,760 "
[fol. 66] Inventory, April 30, 1925	8,905 bbl.	1,874 bbl.
Receipts during month of May, 1925	6,380 "	3,834 "
Available Stocks for May, 1925	15,285 "	5,708 "
Shipments during month of May, 1925	6,877 "	2,127 "
	8,408 "	3,581 "
Inventory, May 31, 1925	8,531 bbl.	3,638 bbl.
Receipts during month of June, 1925	6,224 "	1,620 bbl.
Available Stocks for June, 1925	14,755 "	5,258 "
Shipments during month of June, 1925	7,387 "	2,484 "
	7,368 "	2,774 "

	Gas oil 20/22	Grvty. fuel
Inventory, June 30, 1925	7,156 bbl.	3,002 bbl.
Receipts during month of July, 1925	3,498 "	1,439 "
Available Stocks for July, 1925	10,654 "	4,441 "
Shipments during month of July, 1925	5,819 "	2,239 "
	4,835 "	2,202 "
Inventory, July 31, 1925	4,714 bbl.	2,348 bbl.
Receipts during month of August, 1925	12,029 "	3,513 "
Available Stocks for August, 1925	16,743 "	5,861 "
Shipments during month of August, 1925	6,753 "	1,888 "
	9,990 "	3,973 "
Inventory, August 31, 1925	10,188 bbl.	4,063 bbl.
Receipts during month of Sept., 1925	0 "	0 "
Available Stocks for Sept., 1925	10,188 bbl.	4,063 bbl.
Shipments during month of Sept., 1925	4,798 "	1,845 "
	5,390 "	2,218 "
Inventory, Sept. 30, 1925	8,709 bbl.	2,331 bbl.
Receipts during month of October, 1925	8,383 "	3,371 bbl.
Available Stocks for October, 1925	17,092 "	5,702 "
Shipments during month of October, 1925	7,542 "	2,270 "
	9,550 "	3,432 "
[fol. 67] Inventory, Oct. 30, 1925	9,630 bbl.	3,628 bbl.
Receipts during month of November, 1925	4,623 "	2,580 "

	Gas oil 20/22	Grvty. fuel
Available Stocks for November, 1925	14,253 "	6,208 "
Shipments during month of November, 1925	8,552 "	3,734 "
	5,701 "	2,974 "
Inventory, November 30, 1925	5,497 bbl.	2,688 bbl.
Receipts during month of December, 1925	9,811 "	4,106 "
Available Stocks for December, 1925	15,308 "	6,794 "
Shipments during month of December, 1925	10,622 "	4,137 "
	4,686 "	2,657 "

Monthly Inventory and Receipts Polarine Oils Year 1925, Port Tampa, Fla., & Tampa

(All in 50-gallon Barrels)

	Polarine medium	Polarine heavy	Polarine heavy X
Inventory, Dec. 31, 1924	601 bbl.	715 bbl.	413 bbl.
Receipts, mo. of Jan., 1925	197 "	202 "	0 "
Available Stocks, Jan., 1925	797 bbl.	917 bbl.	413 bbl.
Inventory, Jan. 31, 1925	598 bbl.	714 bbl.	512 bbl.
Receipts, mo. of Feb., 1925	490 "	303 "	0 "
Available Stocks, Feb., 1925	1,088 bbl.	1,017 bbl.	512 bbl.
Inventory, Feb. 28, 1925	641 bbl.	767 bbl.	402 bbl.
Receipts, mo. of March, 1925	779 "	777 "	202 "
Available Stocks, March, 1925	1,420 bbl.	1,544 bbl.	604 bbl.
Inventory, March 27, 1925	659 bbl.	327 bbl.	495 bbl.
Receipts, mo. of April, 1925	295 "	390 "	188 "
Available Stocks, April, 1925	954 bbl.	717 bbl.	683 bbl.
[fol. 68] Inventory, May 1, 1925	919 bbl.	602 bbl.	543 bbl
Receipts, mo. of May, 1925	489 "	463 "	199 bbl.
Available Stocks, May, 1925	1,408 bbl.	1,065 bbl.	742 bbl.

Inventory, May 30, 1925	648 bbl.	338 bbl.	412 bbl.
Receipts, mo. of June, 1925	304 "	990 "	0 "
Available Stocks, June, 1925	952 bbl.	1,328 bbl.	412 bbl.
Inventory, June 30, 1925	869 bbl.	830 bbl.	504 bbl.
Receipts, mo. of July, 1925	0 "	397 "	0 "
Available Stocks, July, 1925	869 bbl.	1,227 bbl.	504 bbl.
Inventory, July 31, 1925	660 bbl.	400 bbl.	339 bbl.
Receipts, mo. of August, 1925	860 "	1,488 bbl.	356 bbl.
Available Stocks, August, 1925	1,520 bbl.	1,888 bbl.	695 bbl.
Inventory, August 28, 1925	802 bbl.	473 bbl.	419 bbl.
Receipts, mo. of Sept., 1925	0 "	0 "	0 "
Available Stocks, Sept., 1925	802 bbl.	473 bbl.	419 bbl.
Inventory, Sept. 30, 1925	689 bbl.	58 bbl.	244 bbl.
Receipts, mo. of Oct., 1925	683 "	1,800 "	387 "
Available Stocks, Oct., 1925	1,372 bbl.	1,858 bbl.	631 bbl.
Inventory, Oct. 30, 1925	832 bbl.	451 bbl.	485 bbl.
Receipts, mo. of Nov., 1925	191 "	1,192 bbl.	187 "
Available Stocks, Nov., 1925	1,023 bbl.	1,643 bbl.	672 bbl.

Monthly Inventory, etc.—Continued

	Polarine medium	Polarine heavy	Polarine heavy X
Inventory, Nov. 27, 1925	470 bbl.	83 bbl.	174 bbl.
Receipts, mo. of Dec., 1925	487 "	1,006 "	295 bbl.
Available Stocks, Dec., 1925	957 bbl.	1,089 bbl.	469 bbl.

[fol. 69] Monthly Inventory and Receipts Lubricating Oils Year 1925, Tampa, Fla.

(All in 50-gallon Barrels)

	S pale pffne.	Black oil	Atlantic red eng.	Renown engine
Inventory, Dec. 31, 1924	741 bbl.	161 bbl.	448 bbl.	108 bbl.
Receipts, mo. of Jan., 1925	0	0	0	0
Available Stocks, Jan., 1925	741 bbl.	161 bbl.	448 bbl.	108 bbl.
Inventory, Jan. 31, 1925	786 bbl.	472 bbl.	439 bbl.	134 bbl.
Receipts, mo. of Feb., 1925	0	0	0	0
Available Stocks, Feb., 1925	786 bbl.	472 bbl.	439 bbl.	134 bbl.
Inventory, Feb. 28, 1925	430 bbl.	400 bbl.	306 bbl.	120 bbl.
Receipts, mo. of March, 1925	596 "	189 "	389 "	0
Available Stocks, March, 1925	1,026 bbl.	589 bbl.	695 bbl.	120 bbl.

Inventory, March 27, 1925	799 bbl.	530 bbl.	238 bbl.	108 bbl
Receipts, mo. of April, 1925	0	0	0	0
Available Stocks, April, 1925	799 bbl.	530 bbl.	238 bbl.	108 bbl
Inventory, May 1, 1925	708 bbl.	473 bbl.	508 bbl.	87 bbl.
Receipts, mo. of May, 1925	0	0	200 "	0
Available Stocks, May, 1925	708 bbl.	473 bbl.	708 bbl.	87 bbl.
Inventory, May 30, 1925	681 bbl.	410 bbl.	354 bbl.	42 bbl.
Receipts, mo. of June, 1925	187 "	203 "	205 "	147 "
Available Stocks, June, 1925	868 bbl.	613 bbl.	559 bbl.	189 bbl.
Inventory, June 30, 1925	584 bbl.	361 bbl.	413 bbl.	22 bbl.
Receipts, mo. of July, 1925	0	0	0	0
Available Stocks, July, 1925	584 bbl.	361 bbl.	413 bbl.	22 bbl.
[fol. 70] Inventory, July 31, 1925	553 bbl.	530 bbl.	286 bbl.	84 bbl.
Receipts, mo. of August, 1925	293 "	200 "	201 "	149 "
Available Stocks, August, 1925	846 bbl.	730 bbl.	487 bbl.	233 bbl.
Inventory, Aug. 28, 1925	567 bbl.	501 bbl.	441 bbl.	1 bbl.
Receipts, mo. of Sept., 1925	0	0	0	0
Available Stocks, Sept., 1925	567 bbl.	501 bbl.	441 bbl.	1 bbl.

Monthly Inventory, etc.—Continued

	S pale pfine.	Black oil	Atlantic red eng.	Renown engine
Inventory, Sept. 30, 1925	456 bbl.	428 bbl.	562 bbl.	0 bbl.
Receipts, mo. of Oct., 1925	597 "	0	0	145 "
Available Stocks, Oct., 1925	1,053 bbl.	428 bbl.	562 bbl.	145 bbl.
Inventory, Oct. 30, 1925	703 bbl.	387 bbl.	485 bbl.	170 bbl.
Receipts, mo. of Nov., 1925	203 "	197 "	189 "	0
Available Stocks, Nov., 1925	906 bbl.	584 bbl.	674 bbl.	170 bbl.
Inventory, Nov. 27, 1925	637 bbl.	333 bbl.	419 bbl.	163 bbl.
Receipts, mo. of Dec., 1925	200 "	0	0	0
Available Stocks, Dec., 1925	837 bbl.	333 bbl.	419 bbl.	163 bbl.

I also have an exhibit giving the same information as to inventories, receipts and disbursements for Jacksonville, which I have marked "Exhibit No. 5" and herewith file.

PLAINTIFF'S EXHIBIT 5

Standard Oil Company, Incorporated

Monthly Inventory and Receipts Fire Proof Oil and Crown Gasoline Year 1925, St. Johns River Terminal, Jacksonville, Fla.

(All 50-gal. Bbbls.)

	Fire proof oil	Crown gasoline
Inventory, Dec. 31, 1924	11,803 bbls.	52,165 bbls.
Receipts month of Jan., 1925	11,191 "	124,411 "
Available stock month of Jan., 1925	22,994 "	176,576 "
Shipments month of Jan., 1925	11,411 "	68,823 "
[fol. 71] Inventory, Jan. 31, 1925	11,552 bbls.	107,471 bbls.
Receipts month of Feb., 1925	10,017 "	69,168 "
Available stock month of Feb., 1925	21,569 "	176,639 "
Shipments month of Feb., 1925	13,954 "	70,671 "
Inventory, Feb. 28, 1925	7,739 "	106,560 "
Receipts month of Mch., 1925	10,504 "	36,225 "
Available stock month of Mch., 1925	18,243 "	142,785 "
Shipments month of Mch., 1925	16,266 "	70,693 "
Inventory, Mch. 31, 1925	2,005 bbls.	72,184 bbls.
Receipts month of Apr., 1925	16,654 "	120,081 "
Available stock month of Apr., 1925	18,659 "	192,265 "
Shipments month of Apr., 1925	9,850 "	66,197 "
Inventory, Apr. 30, 1925	8,658 bbls.	127,132 bbls.
Receipts month of May, 1925	10,044 "	38,171 "
Available stock month of May, 1925	18,702 "	165,303 "
Shipments month of May, 1925	10,814 "	62,003 "

	Fire proof oil	Crown gasoline
Inventory, May 31, 1925	8,003 bbls.	103,438 bbls.
Receipts month of June, 1925	16,014 "	107,714 "
Available stock month of June, 1925	24,017 "	211,152 "
Shipments month of June, 1925	10,726 "	64,805 "
Inventory, June 30, 1925	13,465 bbls.	147,661 bbls.
Receipts month of July, 1925	11,085 "	36,916 "
Available stock month of July, 1925	24,550 "	184,577 "
Shipments month of July, 1925	9,292 "	68,094 "
Inventory, July 31, 1925	15,371 bbls.	116,864 bbls.
Receipts month of Aug., 1925		48,206 "
Available stock month of Aug., 1925	15,371 "	165,070 "
Shipments month of Aug., 1925	10,223 "	82,935 "
[fol. 72] Inventory, Aug. 31, 1925	5,094 bbls.	82,308 bbls.
Receipts month of Sept., 1925	11,119 "	36,980 "
Available stock month of Sept., 1925	16,213 "	119,288 "
Shipments month of Sept., 1925	11,259 "	87,933 "
Inventory, Sept. 30, 1925	5,172 bbls.	31,918 bbls.
Receipts month of Oct., 1925	11,187 "	92,157 "
Available stock month of Oct., 1925	16,359 "	124,075 "
Shipments month of Oct., 1925	14,784 "	88,142 "
Inventory, Oct. 31, 1925	1,888 bbls.	40,358 bbls.
Receipts month of Nov., 1925	16,694 "	116,311 "
Available stock month of Nov., 1925	18,582 "	156,669 "
Shipments month of Nov., 1925	16,861 "	102,702 "

	Fire proof oil	Crown gasoline
Inventory, Nov. 30, 1925	1,496 bbls.	49,945 bbls.
Receipts month of Dec., 1925	22,531 bbls.	101,237 bbls.
Available stock month of Dec., 1925	24,027 bbls.	151,182 bbls.
Shipments month of Dec., 1925	22,981 "	97,135 "
Inventory, Dec. 31, 1925	1,038 bbls.	53,285 bbls.

Tankage—Jacksonville plant—St. Johns River Terminal.

#27— Oils	20,100 bbls.
#32— "	20,500 "
Total	40,600 "
#28—Gasoline	35,500 bbls.
#35— "	23,300 "
#37— "	40,400 "
#39— "	40,000 "
#40— "	23,300 "
Total	162,500 "

[fol. 73] Standard Oil Company (Ky.)

Monthly Inventory and Receipts Heavy Fuel Oil Year 1925, Jacksonville, Fla.

(All in 42-gallon Barrels)

Inventory, Dec. 31, 1924	80,098 bbls.
Receipts during month of Jan., 1925	54,465 "
Available Stocks for January, 1925	134,563 "
Shipments during month of Jan., 1925	118,005 "
	16,558 "
Inventory, Jan. 31, 1925	17,362 bbls.
Receipts during month of Feb. 1925	157,855 "
Available Stocks for February, 1925	165,217 "
Shipments during month of Feb. 1925	119,417 "
	45,800 "

Inventory, Feb. 28, 1925	58,398	bbls.
Receipts during month of March, 1925	162,609	"
Available Stocks for March, 1925	221,007	"
Shipments during month of March, 1925	162,258	"
	58,749	"
Inventory March 31, 1925	61,492	bbls.
Receipts during month of April, 1925	115,470	"
Available Stocks for April, 1925	176,962	"
Shipments during month of April, 1925	116,860	"
	60,102	"
Inventory, April 30, 1925	61,170	bbls.
Receipts during month of May, 1925	56,804	"
Available Stocks for May, 1925	117,974	"
Shipments during month of May, 1925	91,733	"
	26,241	"
[fol. 74] Inventory, May 31, 1925	27,212	bbls.
Receipts during month of June, 1925	111,483	"
Available Stocks for June, 1925	138,695	"
Shipments during month of June, 1925	105,848	"
	32,847	"
Inventory, June 30, 1925	35,050	bbls.
Receipts during month of July, 1925	119,951	"
Available Stocks for July, 1925	155,714	"
Shipments during month of July, 1925	103,238	"
	52,476	"
Inventory, July 31, 1925	52,167	bbls.
Receipts during month of August, 1925	104,547	"

Available Stocks for August, 1925	156,714	bbls.
Shipments during month of August, 1925	119,078	"
	37,636	"
Inventory, August 31, 1925	38,226	bbls.
Receipts during month of Sept. 1925	170,184	"
Available Stocks for Sept., 1925	208,410	"
Shipments during month of Sept., 1925	129,807	"
	78,603	"
Inventory, Sept. 30, 1925	81,214	bbls.
Receipts during month of Oct. 1925	109,668	"
Available Stocks for Oct., 1925	190,882	"
Shipments during month of Oct. 1925	126,955	"
	63,927	"
Inventory, Oct. 30, 1925	71,287	bbls.
Receipts during month of Nov. 1925	114,216	"
Available Stocks for November, 1925	185,503	"
Shipments during month of November, 1925	144,267	"
	41,236	"
[fol. 75] Inventory, Nov. 30, 1925	36,611	bbls.
Receipts during month of Dec. 1925	213,829	"
Available Stocks for December, 1925	250,440	"
Shipments during month of Dec., 1925	144,770	"
	105,670	"

Standard Oil Company (Ky.)

Monthly Inventory and Receipts Gas Oil and 20/22 Gravity Fuel Oil Year 1925, Jacksonville, Fla.

(All in 50-gallon Barrels)

	Gas oil		20/22 grvty. fuel	
Inventory, Dec. 31, 1924	2,512	bbl.	3,767	bbl.
Receipts during month of Jan., 1925	9,799	"	2,145	"
Available Stocks for January, 1925	12,311	"	5,912	"
Shipments during month of Jan. 1925	8,410	"	1,602	"
	3,901	"	4,310	"
Inventory, Jan. 31, 1925	3,887	bbl.	4,365	bbl.
Receipts during month of Feb., 1925	11,331	"	480	"
Available Stocks for February, 1925	15,218	"	4,845	"
Shipments during month of Feb. 1925	6,730	"	1,692	"
	8,488	"	3,153	"
Inventory, Feb. 28, 1925	8,564	bbl.	2,188	bbl.
Receipts during month of March, 1925	4,824	"	1,582	"
Available Stocks for March, 1925	13,388	"	3,770	"
Shipments during month of March, 1925	4,817	"	1,267	"
	8,571	"	2,503	"
[fol. 76] Inventory, March 31, 1925	8,574	bbl.	3,510	bbl.
Receipts during month of April, 1925	3,918	"	2,341	"
Available Stocks for April, 1925	12,492	"	5,851	"

	Gas oil	20/22 grvty. fuel
Shipments during month of April, 1925	4,490 bbl.	1,911 bbl.
	8,002 "	3,940 "
Inventory, April 30, 1925	7,988 bbl.	3,999 bbl.
Receipts during month of May, 1925	3,682 "	1,544 "
Available Stocks for May, 1925	11,670 "	5,543 "
Shipments during month of May, 1925	5,165 "	1,818 "
	6,505 "	3,725 "
Inventory, May 31, 1925	6,484 bbl.	3,768 bbl.
Receipts during month of June, 1925	6,442 "	1,875 bbl.
Available Stocks for June, 1925	12,926 "	5,643 "
Shipments during month of June, 1925	5,356 "	1,658 "
	7,570 "	3,985 "
Inventory, June 30, 1925	7,630 bbl.	4,057 bbl.
Receipts during month of July, 1925	4,476 "	835 "
Available Stocks for July, 1925	12,106 "	4,892 "
Shipments during month of July, 1925	6,164 "	745 "
	5,942 "	4,147 "
Inventory, July 31, 1925	5,963 bbl.	4,167 bbl.
Receipts during month of August, 1925	5,147 bbl.	675 "
Available Stocks for August, 1925	11,110 "	4,842 "
Shipments during month of August, 1925	4,963 "	1,070 "
	6,147 "	3,772 "

Inventory, August 31, 1925	6,007	bbl.	3,824	bbl.
Receipts during month of Sept. 1925	4,590	"	1,557	"
Available Stocks for Sept. 1925	10,570	"	5,381	"
Shipments during month of Sept. 1925	5,846	"	1,669	"
	5,111	"	3,712	"
[fol. 77] Inventory, Sept. 30, 1925	5,211	bbl.	3,771	bbl.
Receipts during month of October, 1925	5,096	"	871	"
Available Stocks for October, 1925	10,307	"	4,642	"
Shipments during month of October, 1925	7,166	"	2,007	"
	3,141	"	2,635	"
Inventory, October 30, 1925	3,081	bbl.	2,639	bbl.
Receipts during month of November, 1925	9,213	"	2,753	"
Available Stocks for November, 1925	12,294	"	5,392	"
Shipments during month of November, 1925	8,260	"	1,353	"
	4,034	"	4,039	"
Inventory, Nov. 30, 1925	4,026	bbl.	4,038	bbl.
Receipts during month of December, 1925	8,306	"	1,108	"
Available Stocks for December, 1925	12,332	"	5,146	"
Shipments during month of December, 1925	9,452	"	2,457	"
	2,880	"	2,689	"

Monthly Inventory and Receipts Polarine Oils Year 1925, Jacksonville, Fla.

(All in 50-gallon Barrels)

	Polarine medium	Polarine heavy	Polarine hvy. X	Polarine hvy. XX
Inventory, Dec. 31, 1924	355 bbl.	682 bbl.	551 bbl.	296 bbl.
Receipts, mo. of Jan., 1925	1,481 "	1,607 "	633 "	302 "
Available Stocks for Jan. 1925	1,836 "	2,289 "	1,184 "	598 "
Inventory, Jan. 31, 1925	509 bbl.	830 bbl.	506 bbl.	418 bbl.
Receipts, mo. of Feb. 1925	1,483 "	998 "	298 "	0 "
Available Stocks for Feb. 1925	1,991 "	1,828 "	804 "	418 "
Inventory, Feb. 28, 1925	667 bbl.	627 bbl.	606 bbl.	444 bbl.
Receipts, mo. of March, 1925	1,003 "	709 "	0 "	0 "
Available Stocks for March, 1925	1,670 bbl.	1,336 bbl.	606 bbl.	444 bbl.
[fol. 78] Inventory, Mch. 27, 1925	453 bbl.	537 bbl.	668 bbl.	393 bbl.
Receipts, mo. of April, 1925	1,522 "	1,722 "	396 "	189 "
Available Stocks for Apr. 1925	1,975 bbl.	2,259 bbl.	1,064 bbl.	582 bbl.

Monthly Inventory, etc.—Continued

	Polarine medium	Polarine heavy	Polarine hvy. X	Polarine hvy. XX
Inventory, April 30, 1925	510 bbl.	588 bbl.	638 bbl.	350 bbl.
Receipts, Mo. of May, 1925	987 "	1,003 "	202 "	00 "
Available Stocks for May, 1925	1,497 bbl.	1,591 bbl.	840 bbl.	350 bbl.
Inventory, May 30, 1925	760 bbl.	366 bbl.	456 bbl.	204 bbl.
Receipts, mo. of June, 1925	979 "	2,419 "	703 "	0 "
Available stocks for June, 1925	1,739 bbl.	2,785 bbl.	1,159 bbl.	204 bbl.
Inventory, June 30, 1925	1,193 bbl.	681 bbl.	559 bbl.	254 bbl.
Receipts, mo. of July, 1925	781 "	1,171 "	201 "	303 "
Available Stocks for July 1925	1,974 "	1,852 "	760 "	557 "
Inventory, July 31, 1925	684 bbl.	463 bbl.	505 bbl.	135 bbl.
Receipts, mo. of August 1925	790 "	1,796 "	349 "	0 "
Available Stocks for Aug., 1925	1,474 bbl.	2,259 bbl.	854 bbl.	135 bbl.
Inventory, August 28, 1925	1,225 bbl.	572 bbl.	385 bbl.	171 bbl.
Receipts, mo. of Sept. 1925	707 "	1,189 "	406 "	405 bbl.
Available Stocks for Sept., 1925	1,932 bbl.	1,761 bbl.	791 bbl.	576 bbl.
Inventory, Sept. 30, 1925	882 bbl.	425 bbl.	294 bbl.	167 bbl.
Receipts, mo. of October, 1925	440 "	948 "	0 "	0 "
Available Stocks for Oct. 1925	1,322 bbl.	1,373 bbl.	294 bbl.	167 bbl.

Inventory, Oct. 30, 1925	1,100 bbl.	488 bbl.	232 bbl.	189 bbl.
Receipts, mo. of November, 1925	786 "	3,681 "	885 "	382 "
Available Stocks for Nov., 1925	1,886 bbl.	4,169 bbl.	1,117 bbl.	572 bbl.
Inventory, Nov. 27, 1925	1,066 bbl.	487 bbl.	2,013 bbl.	412 bbl.
Receipts, mo. of December, 1925	3,973 "	3,483 "	1,175 "	195 "
Available Stocks of Dec. 1925	5,039 bbl.	3,970 bbl.	3,188 bbl.	607 bbl.

[fol. 79] Monthly Inventory and Receipts Lubricating Oils, Year 1925, Jacksonville, Fla.

(All in 50-gallon Barrels)

	S pale pffne	Black oil	Atlantic red eng.	Standard gas eng.	Renown engine
Inventory, Dec. 31, 1924	252 Bbl.	236 Bbl.	213 Bbl.	200 Bbl.	357 Bbl.
Receipts, mo. of Jan. 1925	494 "	188 "	508 "	0 "	0 "
Available Stocks, Jan. 1925	746 Bbl.	424 Bbl.	721 Bbl.	200 Bbl.	357 "
Inventory, Jan. 31, 1925	568 Bbl.	310 Bbl.	514 Bbl.	127 Bbl.	242 Bbl.
Receipts, mo. of Feb. 1925	196 "	0 "	0 "	0 "	203 "
Available Stocks, Feb. 1925	764 Bbl.	310 Bbl.	514 Bbl.	127 Bbl.	445 Bbl.

Monthly Inventory, etc.—Continued

	S pale pfine	Black oil	Atlantic red eng.	Standard gas eng.	Renown engine
Inventory, Feb. 28, 1925	667 Bbl.	232 Bbl.	396 Bbl.	67 Bbl.	146 Bbl.
Receipts, mo. of March, 1925	0 "	203 "	190 "	204 "	0 "
Available Stocks, Mch. 1925	667 "	435 "	586 "	271 "	146 "
Inventory, Mch. 27, 1925	561 Bbl.	192 Bbl.	225 Bbl.	6 Bbl.	286 Bbl.
Receipts, mo. April, 1925	202 "	0 "	203 "	0 "	0 "
Available Stocks, Apr. 1925	763 Bbl.	192 Bbl.	428 Bbl.	6 Bbl.	286 Bbl.
Inventory, April 30, 1925	598 Bbl.	299 Bbl.	435 Bbl.	148 Bbl.	171 Bbl.
Receipts, mo. May, 1925	0 "	0 "	192 "	0 "	0 "
Available Stocks, May, 1925	598 Bbl.	299 Bbl.	627 Bbl.	148 Bbl.	171 Bbl.
Inventory, May 30, 1925	394 Bbl.	170 Bbl.	281 Bbl.	93 Bbl.	286 Bbl.
Receipts, mo. June, 1925	485 "	201 "	0 "	191 "	0 "
Available Stocks, June, 1925	879 Bbl.	371 Bbl.	281 Bbl.	284 Bbl.	286 Bbl.
Inventory, June 30, 1925	645 Bbl.	269 Bbl.	333 Bbl.	194 Bbl.	365 Bbl.
Receipts, mo. July, 1925	0 "	0 "	202 "	0 "	0 "
Available Stocks, July, 1925	645 Bbl.	269 Bbl.	535 Bbl.	194 Bbl.	365 Bbl.

Inventory, July 31, 1925	491 Bbl.	161 Bbl.	139 Bbl.	152 Bbl.	230 Bbl.
Receipts, mo. Aug. 1925	0 "	194 "	388 "	0 "	0 "
Available Stocks, Aug. 1925	491 Bbl.	355 Bbl.	527 Bbl.	152 Bbl.	230 Bbl.
Inventory, Aug. 28, 1925	316 Bbl.	61 Bbl.	175 Bbl.	115 Bbl.	357 Bbl.
Receipts, mo. Sept. 1925	389 "	0 "	0 "	0 "	0 "
Available Stocks, Sept. 1925	705 Bbl.	61 Bbl.	175 Bbl.	115 Bbl.	357 Bbl.
Inventory, Sept. 30, 1925	146 Bbl.	149 Bbl.	285 Bbl.	63 Bbl.	137 Bbl.
Receipt-, mo. Oct. 1925	194 "	201 "	220 "	214 "	202 "
Available Stocks, Oct. 1925	340 Bbl.	350 Bbl.	505 Bbl.	277 Bbl.	339 Bbl.
Inventory, Oct. 30, 1925	559 Bbl.	222 Bbl.	298 Bbl.	205 Bbl.	201 Bbl.
Receipts, mo. Nov. 1925	198 "	180 "	205 "	0 "	208 "
Available Stocks, Nov. 1925	757 Bbl.	402 Bbl.	503 Bbl.	205 Bbl.	409 Bbl.
Inventory, Nov. 27, 1925	467 Bbl.	151 Bbl.	314 Bbl.	172 Bbl.	137 Bbl.
Receipts, mo. Dec. 1925	0 "	0 "	294 "	0 "	0 "
Available Stocks, Dec. 1925	467 Bbl.	151 Bbl.	608 Bbl.	172 Bbl.	137 Bbl.

[fol. 80] We do not use any particular tanks for products going to any particular section. All of our gasoline tanks are lumped, and all of our refined oil tanks are lumped, etc. When any particular cargo of either gasoline or refined oil is pumped into a tank, nobody knows where it is going.

There are no points outside of Florida supplied from Port Tampa. But about 20% or 30% of the total tankage at Jacksonville goes to points outside of Florida. There is no separation, however, at Jacksonville of the stuff as it comes in there that is going to be used to supply Florida points and that which is going to be used outside of Florida. It is all in the same tank or tanks.

About 13% of the refined oil and gasoline at Jacksonville is used at Jacksonville itself.

None of these products are used at Port Tampa. We have no delivery facilities or wagons there.

Tampa is about 8 miles from Port Tampa.

I will file statements for the year 1924, which give the same information as to monthly inventory receipts of fire proof oil and gasoline as is given in the one for 1925. They are as follows:

Standard Oil Company, Incorporated

Receipts and Shipments Lubricating Oils, July 1, 1923, to December 31, 1924, Port Tampa, Fla.

(All in 50-gal. Bbls.)

1923		
July	1,054	bbls.
Aug.	798	"
Sept	—	
Oct.	1,214	"
Nov.	1,046	"
Dec.	969	"
1924		
Jan.	1,600	"
Feb.	1,082	"
March	—	
April	2,490	"
May	706	"
June	713	"

1924		
July	——	bbls.
Aug.	1,600	"
[fol. 81] Sept.	1,191	bbls.
Oct.	2,584	"
Nov.	3,467	"
Dec.	1,967	"

Standard Oil Company, Incorporated

Monthly Inventory and Receipts Gas Oil and 20/22 Gravity Fuel Oil, July 1, 1923, to December 31, 1924, Port Tampa, Fla.

(All in 50-gal. Bbls.)

Inventory June 30, 1923	8611	bbls.
Receipts month of July, 1923		
Available stock month of July, 1923	8611	bbls.
Shipments month of July, 1923	2519	"
Inventory July 31, 1923	6129	bbls.
Receipts month of August, 1923		
Available stock month of August, 1923	6129	"
Shipments month of August, 1923	2084	"
Inventory August 31, 1923	4049	bbls.
Receipts month of September, 1923	3750	"
Available stock month of September, 1923	7799	"
Shipments month of September, 1923	2590	"
Inventory September 30, 1923	5172	bbls.
Receipts month of October, 1923	4631	"
Available stock month of October, 1923	9803	"
Shipments month of October, 1923	4386	"
Inventory October 31, 1923	5457	bbls.
Receipts month of November, 1923	10364	"
Available stock month of November, 1923	15821	"
Shipments month of November, 1923	5278	"

[fol. 82] Inventory November 30, 1923	10464	bbls.
Receipts month of December, 1923	4968	"
Available stock month of December, 1923	15432	"
Shipments month of December, 1923	7360	"
Inventory December 31, 1923	8167	bbls.
Receipts month of January, 1924	9602	"
Available stock month of January, 1924	17769	"
Shipments month of January, 1924	4271	"
Inventory January 31, 1924	13389	bbls.
Receipts month of February, 1924	2969	"
Available stock month of February, 1924	16358	"
Shipments month of February, 1924	3746	"
Inventory February 29, 1924	12588	bbls.
Receipts month of March, 1924	1943	"
Available stock month of March, 1924	14531	"
Shipments month of March, 1924	4565	"
Inventory March 31, 1924	10097	bbls.
Receipts month of April, 1924	7800	"
Available stock month of April, 1924	17897	"
Shipments month of April, 1924	4660	"
Inventory April 30, 1924	13416	bbls.
Receipts month of May, 1924	3142	"
Available stock month of May, 1924	16558	"
Shipments month of May, 1924	4216	"
Inventory May 31, 1924	12349	bbls.
Receipts month of June, 1924	3754	"
Available stock month of June, 1924	16103	"
Shipments month of June, 1924	4259	"

Inventory June 30, 1924	11918	bbls.
Receipts month of July, 1924		
Available stock month of July, 1924	11918	"
Shipments month of July, 1924	4146	"
[fol. 83] Inventory July 31, 1924	7767	bbls.
Receipts month of August, 1924	5031	"
Available stock month of August, 1924	12798	"
Shipments month of August, 1924	4621	"
Inventory August 31, 1924	8227	bbls.
Receipts month of September, 1924	7676	"
Available stock month of September, 1924	15903	"
Shipments month of September, 1924	5486	"
Inventory September 30, 1924	10521	bbls.
Receipts month of October, 1924	11862	"
Available stock month of October, 1924	22383	"
Shipments month of October, 1924	8821	"
Inventory October 31, 1924	13647	bbls.
Receipts month of November, 1924	8065	"
Available stock month of November, 1924	21712	"
Shipments month of November, 1924	8804	"
Inventory November 30, 1924	13012	bbls.
Receipts month of December, 1924	13933	"
Available stock month of December, 1924	26945	"
Shipments month of December, 1924	10014	"

Standard Oil Company, Incorporated

Monthly Inventory and Receipts Heavy Fuel Oil, July 1, 1923, to December 31, 1924, Port Tampa, Fla.

(All in 42-gal. Bbls.)

Inventory June 30, 1923	101952	bbls.
Receipts month of July, 1923		
Available stock month of July, 1923	101952	"
Shipments month of July, 1923	27894	"
[fol. 84] Inventory July 31, 1923	74154	bbls.
Receipts month of August, 1923	48502	"
Available stock month of August, 1923	122656	"
Shipments month of August, 1923	37302	"
Inventory August 31, 1923	85600	bbls.
Receipts month of September, 1923	48005	"
Available stock month of September, 1923	133605	"
Shipments month of September, 1923	33836	"
Inventory September 30, 1923	99569	bbls.
Receipts month of October, 1923		
Available stock month of October, 1923	99569	"
Shipments month of October, 1923	33224	"
Inventory October 31, 1923	66094	bbls.
Receipts month of November, 1923	48643	"
Available stock month of November, 1923	114737	"
Shipments month of November, 1923	32133	"
Inventory November 30, 1923	82133	bbls.
Receipts month of December, 1923	47173	"
Available stock month of December, 1923	129306	"
Shipments month of December, 1923	39870	"

Inventory December 31, 1923	89175	bbls.
Receipts month of January, 1924		
Available stock month of January, 1924	89175	bbls.
Shipments month of January, 1924	64332	"
Inventory January 31, 1924	26755	bbls.
Receipts month of February, 1924	149753	"
Available stock month of February, 1924	176508	"
Shipments month of February, 1924	82605	"
Inventory February 29, 1924	92091	bbls.
Receipts month of March, 1924	89543	"
Available stock month of March, 1924	181634	"
Shipments month of March, 1924	72408	"
[fol. 85] Inventory March 31, 1924	108615	bbls.
Receipts month of April, 1924	42101	"
Available stock month of April, 1924	150716	"
Shipments month of April, 1924	66027	"
Inventory April 30, 1924	84217	bbls.
Receipts month of May, 1924	42051	"
Available stock month of May, 1924	126268	"
Shipments month of May, 1924	73559	"
Inventory May 31, 1924	51884	bbls.
Receipts month of June, 1924	98861	"
Available stock month of June, 1924	150745	"
Shipments month of June, 1924	56424	"
Inventory June 30, 1924	94705	"
Receipts month of July, 1924	47956	"
Available stock month of July, 1924	142661	"
Shipments month of July, 1924	65239	"

Inventory July 31, 1924	77112 bbls.
Receipts month of August, 1924	47471 "
Available stock month of August, 1924	124583 "
Shipments month of August, 1924	71651 "
Inventory August 31, 1924	53187 bbls.
Receipts month of September, 1924	48866 "
Available stock month of September, 1924	102053 "
Shipments month of September, 1924	67911 "
Inventory September 30, 1924	33903 bbls.
Receipts month of October, 1924	74060 "
Available stock month of October, 1924	107963 "
Shipments month of October, 1924	70249 "
Inventory October 31, 1924	37330 bbls
Receipts month of November, 1924	88471 "
Available stock month of November, 1924	125801 "
Shipments month of November, 1924	78514 "
[fol. 86] Inventory November 30, 1924	47012 bbls.
Receipts month of December, 1924	103676 "
Available stock month of December, 1924	150688 "
Shipments month of December, 1924	90347 "

Standard Oil Company, Incorporated

Monthly Inventory and Receipts Fire Proof Oil and Crown Gasoline, July 1, 1923, to December 31, 1924, Port Tampa, Fla.

(All 50-gal. Bbls.)

	Fire proof oil	Crown gasoline
Inventory June 30, 1923	2632 bbls.	36212 bbls.
Receipts month of July, 1923	11004 "	29234 "
Available stock month of July, 1923	13636 "	65446 "
Shipments month of July, 1923	4442 "	20416 "

	Fire proof oil	Crown gasoline
Inventory July 31, 1923	9199 bbls.	44996 bbls.
Receipts month of August, 1923		
Available stock month of August, 1923	9199 bbls.	44996 bbls.
Shipments month of August 1923	6833 "	26199 "
Inventory August 31, 1923	3365 bbls.	18695 "
Receipts month of September, 1923	2890 "	18351 "
Available stock month of September, 1923	6255 "	37046 "
Shipments month of September, 1923	5473 "	27080 "
Inventory September 30, 1923	782 bbls.	9860 bbls.
Receipts month of October, 1923	11126 "	49587 "
Available stock month of October, 1923	11908 "	59447 "
Shipments month of October, 1923	9602 "	30670 "
Inventory October 31, 1923	2297 bbls.	28449 bbls.
Receipts month of November, 1923	22316 "	58955 "
Available stock month of November, 1923	24613 "	87404 "
Shipments month of November, 1923	10562 "	32235 "
[fol. 87] Inventory November 30, 1923	10408 bbls.	55028 bbls.
Receipts month of December, 1923	5624 "	34766 "
Available stock month of December, 1923	19672 "	89794 "
Shipments month of December, 1923	9117 "	37812 "

	Fire proof oil	Crown gasoline
Inventory December 31, 1923	10590 bbls.	51895 bbls.
Receipts month of January, 1924		26965 "
Available stock month of January, 1924	10590 "	78860 "
Shipments month of January, 1924	8534 "	37605 "
Inventory January 31, 1924	1990 bbls.	41054 "
Receipts month of February, 1924	11083 "	29300 "
Available stock month of February, 1924	13073 "	70354 "
Shipments month of February, 1924	11814 "	39938 "
Inventory February 29, 1924	1553 bbls.	30375 bbls.
Receipts month of March, 1924	12947 "	25247 "
Available stock month of March, 1924	14500 "	55622 "
Shipments month of March, 1924	8379 "	35977 "
Inventory March 31, 1924	6188 bbls.	19649 bbls.
Receipts month of April, 1924	11166 "	69453 "
Available stock month of April, 1924	17354 "	89102 "
Shipments month of April, 1924	5986 "	36610 "
Inventory April 30, 1924	11369 bbls.	52571 bbls.
Receipts month of May, 1924	11069 "	28984 "
Available stock month of May, 1924	22438 "	81555 "
Shipments month of May, 1924	6787 "	36030 "
Inventory May 31, 1924	15790 bbls.	45584 bbls.
Receipts month of June, 1924	11133 "	29153 "
Available stock month of June, 1924	26923 "	74737 "
Shipments month of June, 1924	5929 "	31426 "

	Fire proof oil	Crown gasoline
[fol. 88] Inventory June 30, 1924	10068 bbls.	43193 bbls.
Receipts month of July, 1924	....	22269 "
Available stock month of July, 1924	10068 "	65462 "
Shipments month of July, 1924	5232 "	32560 "
Inventory July 31, 1924	4829 bbls.	33566 bbls.
Receipts month of August, 1924	5577 "	34805 "
Available stock month of August, 1924	10406 "	68371 "
Shipments month of August, 1924	5789 "	30619 "
Inventory August 31, 1924	4637 bbls.	37594 bbls.
Receipts month of September, 1924	5711 "	23697 "
Available stock month of September, 1924	10348 "	61291 "
Shipments month of September, 1924	6570 "	36834 "
Inventory September 30, 1924	3756 bbls.	24215 bbls.
Receipts month of October, 1924	20166 "	62514 "
Available stock month of October, 1924	23922 "	86729 "
Shipments month of October, 1924	8277 "	36269 "
Inventory October 31, 1924	15643 bbls.	50255 bbls.
Receipts month of November, 1924	11149 "	32711 "
Available stock month of November, 1924	26792 "	82966 "
Shipments month of November, 1924	9260 "	39226 "

	Fire proof oil	Crown gasoline
Inventory November 30, 1924	17495 bbls.	43616 bbls.
Receipts month of December, 1924	10041 "	79053 "
Available stock month of December, 1924	27536 "	122669 "
Shipments month of December, 1924	10657 "	47044 "

[fol. 89] Standard Oil Company, Incorporated

Receipts and Shipments Lubricating Oils, July 1, 1923, to December 31, 1924, Jacksonville, Fla. (Talleyrand Supply Station)

(All 50-gal. Bbls.)

1923.	
July	1,945 bbls.
Aug.	1,959 "
Sept.	2,622 "
Oct.	2,332 "
Nov.	2,581 "
Dec.	4,665 "
1924.	
Jan.	3,356 "
Feb.	2,571 "
March	1,560 "
April	2,290 "
May	5,174 "
June	1,526 "
July	2,264 "
Aug.	3,857 "
Sept.	2,531 "
Oct.	2,204 "
Nov.	1,947 "
Dec.	6,773 "

Standard Oil Company, Incorporated

Monthly Inventory and Receipts Gas Oil and 20/22 Gravity Fuel Oil, July 1, 1923, to December 31, 1924, Jacksonville, Fla. (Talleyrand Supply Station)

(All 50-gal. Bbls.)

Inventory June 30, 1923	4,891 bbls.
Receipts Month of July, 1923	3,050 "
Available stock month of July, 1923	7,941 "
Shipments month of July, 1923	3,478 "
[fol. 90] Inventory July 31, 1923	4,478 bbls.
Receipts month of August, 1923	2,355 "
Available stock month of August, 1923	6,833 "
Shipments month of August, 1923	3,878 "
Inventory August 31, 1923	2,954 bbls.
Receipts month of September, 1923	4,886 "
Available stock month of September, 1923	7,840 "
Shipments month of September, 1923	3,189 "
Inventory September 30, 1923	4,688 bbls.
Receipts month of October, 1923	4,788 "
Available stock month of October, 1923	9,476 "
Shipments month of October, 1923	3,850 "
Inventory October 31, 1923	5,469 bbls.
Receipts month of November, 1923	2,427 "
Available stock month of November, 1923	7,896 "
Shipments month of November, 1923	4,832 "
Inventory November 30, 1923	3,026 bbls.
Receipts month of December, 1923	12,544 "
Available stock month of December, 1923	15,570 "
Shipments month of December, 1923	5,007 "

Inventory December 31, 1923	10,551 bbls.
Receipts month of January, 1924	5,054 "
Available stock month of January, 1924	15,605 "
Shipments month of January, 1924	5,754 "
Inventory January 31, 1924	9,806 bbls.
Receipts month of February, 1924	7,141 "
Available stock month of February, 1924	16,947 "
Shipments month of February, 1924	4,962 "
Inventory February 29, 1924	11,979 bbls.
Receipts month of March, 1924	2,019 "
Available stock month of March, 1924	13,998 "
Shipments month of March, 1924	7,345 "
[fol. 91] Inventory March 31, 1924	6,696 bbls.
Receipts month of April, 1924	4,751 "
Available stock month of April, 1924	11,447 "
Shipments month of April, 1924	4,733 "
Inventory April 30, 1924	6,729 bbls.
Receipts month of May, 1924	7,325 bbls.
Available stock month of May, 1924	14,054 "
Shipments month of May, 1924	3,949 "
Inventory May 31, 1924	10,300 bbls.
Receipts month of June, 1924	6,216 "
Available stock month of June, 1924	16,516 "
Shipments month of June, 1924	4,766 "
Inventory June 30, 1924	11,809 bbls.
Receipts month of July, 1924	4,019 "
Available stock month of July, 1924	15,828 "
Shipments month of July, 1924	5,516 "

Inventory July 31, 1924	10,466 bbls.
Receipts month of August, 1924	7,042 "
Available stock month of August, 1924	17,508 "
Shipments month of August, 1924	6,448 "
Inventory August 31, 1924	11,577 bbls.
Receipts month of September, 1924	
Available stock month of September, 1924	11,577 "
Shipments month of September, 1924	5,190 "
Inventory September 30, 1924	6,358 bbls.
Receipts month of October, 1924	11,851 "
Available stock month of October, 1924	18,209 "
Shipments month of October, 1924	6,062 "
Inventory October 31, 1924	12,127 bbls.
Receipts month of November, 1924	4,297 "
Available stock month of November, 1924	16,424 "
Shipments month of November, 1924	8,000 "
[fol. 92] Inventory November 30, 1924	8,474 bbls.
Receipts month of December, 1924	12,622 "
Available stock month of December, 1924	21,096 "
Shipments month of December, 1924	9,290 "

Standard Oil Company, Incorporated

Monthly Inventory and Receipts Heavy Fuel Oil, July 1, 1923, to December 31, 1924, Jacksonville, Fla. (Talleyrand Supply Station)

(All 42-gal. Bbls.)

Inventory June 30, 1923	59,787 bbls.
Receipts month of July, 1923	48,130 "
Available stock month of July, 1923	107,917 "
Shipments month of July, 1923	46,945 "

Inventory July 31, 1923	62,236 bbls.
Receipts month of August, 1923	47,660 "
Available stock month of August, 1923	109,896 "
Shipments month of August, 1923	51,497 "
Inventory August 31, 1923	59,285 bbls.
Receipts month of September 1923	49,618 "
Available stock month of September, 1923	108,903 "
Shipments month of September, 1923	46,929 "
Inventory September 30, 1923	62,615 bbls.
Receipts month of October, 1923	49,516 bbls.
Available stock month of October, 1923	112,131 "
Shipments month of October, 1923	72,040 "
Inventory October 31, 1923	41,202 bbls.
Receipts month of November, 1923	90,165 "
Available stock month of November, 1923	131,367 "
Shipments month of November, 1923	65,755 "
[fol. 93] Inventory November 30, 1923	66,756 bbls.
Receipts month of December, 1923	89,216 "
Available stock month of December, 1923	155,972 "
Shipments month of December, 1923	88,509 "
Inventory December 31, 1923	69,014 bbls.
Receipts month of January, 1924	140,138 "
Available stock month of January, 1924	209,152 "
Shipments month of January, 1924	121,434 "
Inventory January 31, 1924	90,205 bbls.
Receipts month of February, 1924	48,416 "
Available stock month of February, 1924	138,621 "
Shipments month of February, 1924	79,694 "

Inventory February 29, 1924	59,347 bbls.
Receipts month of March, 1924	96,261 "
Available stock month of March, 1924	155,608 "
Shipments month of March, 1924	98,859 "
Inventory March 31, 1924	59,407 bbls.
Receipts month of April, 1924	95,192 "
Available stock month of April, 1924	154,599 "
Shipments month of April, 1924	90,754 "
Inventory April 30, 1924	65,742 bbls.
Receipts month of May, 1924	100,410 "
Available stock month of May, 1924	166,152 "
Shipments month of May, 1924	88,019 "
Inventory May 31, 1924	79,132 bbls.
Receipts month of June, 1924	48,328 "
Available stock month of June, 1924	127,460 "
Shipments month of June, 1924	41,417 "
Inventory June 30, 1924	86,787 bbls.
Receipts month of July, 1924	48,459 "
Available stock month of July, 1924	135,246 "
Shipments month of July, 1924	51,913 "
[fol. 94] Inventory July 31, 1924	85,051 bbls.
Receipts month of August, 1924	47,596 "
Available stock month of August, 1924	132,647 "
Shipments month of August, 1924	60,602 "
Inventory August 31, 1924	72,272 bbls.
Receipts month of September, 1924	46,549 "
Available stock month of September, 1924	118,821 "
Shipments month of September, 1924	73,557 "

Inventory September 30, 1924	47,091 bbls.
Receipts month of October, 1924	78,025 "
Available stock month of October, 1924	125,116 "
Shipment month of October, 1924	75,680 "
Inventory October 31, 1924	51,407 bbls.
Receipts month of November, 1924	74,396 "
Available stock month of November, 1924	125,803 "
Shipments month of November, 1924	94,951 "
Inventory November 30, 1924	31,485 bbls.
Receipts month of December, 1924	149,022 "
Available stock month of December, 1924	180,507 "
Shipments month of December, 1924	101,934 "

Standard Oil Company, Incorporated

Monthly Inventory and Receipts Fire Proof Oil and Crown Gasoline, July 1, 1923, to December 31, 1924, Jacksonville, Fla. (Talleyrand Supply Station)

(All 50-gal. Bbls.)

	Fire-proof oil	Crown gasoline
Inventory 30, 1923	12531 bbls.	78159 bbls.
Receipts month of July, 1923	11007 "	29292 "
Available Stock month of July, 1923	23538 "	107451 "
Shipments month of July 1923	8761 "	41103 "
[fol. 95] Inventory July 31, 1923	14788 bbls.	66217 bbls.
Receipts month of August, 1923	5557 "	34937 "
Available Stock month of August, 1923	20345 "	101154 "
Shipments month of August, 1923	8647 "	50062 "
Inventory August 31, 1923	11690 "	50854 "
Receipts month of September, 1923	5588 "	34929 "

	Fire-proof oil	Crown gasoline
Available Stock month of September, 1923	17278 bbls.	85783 bbls.
Shipments month of September, 1923	9247 "	49087 "
Inventory September 30, 1923	8037 "	36507 "
Receipts month of October, 1923	16051 "	103951 "
Available Stock month of October, 1923	24088 "	140458 "
Shipments month of October, 1923	11933 "	58649 "
Inventory October 31, 1923	12118 "	81283 "
Receipts month of November, 1923	16622 "	23973 "
Available Stock month of November, 1923	28740 "	105256 "
Shipments month of November, 1923	23157 "	64051 "
Inventory November 30, 1923	5483 "	40480 "
Receipts month of December, 1923	19440 "	92401 "
Available Stock month of December, 1923	24923 "	132881 "
Shipments month of December, 1923	13493 "	53369 "
Inventory December 31, 1923	11484 "	79341 "
Receipts month of January 1924	11198 "	68929 "
Available Stock month of January, 1924	22682 "	148270 "
Shipments month of January, 1924	14748 "	71374 "
Inventory January 31, 1924	7862 "	76249 "
Receipts month of February, 1924	23559 "	56994 "

	Fire-proof oil	Crown gasoline
Available Stock month of February, 1924	31421 bbls.	133243 bbls.
Shipments month of February, 1924	14525 "	56489 "
[fol. 96] Inventory February 29, 1924	16840 bbls.	76450 bbls.
Receipts month of March, 1924	16702 "	64137 "
Available Stock month of March, 1924	33542 "	140587 "
Shipments month of March, 1924	9928 "	61612 "
Inventory March 31, 1924	23660 "	78876 "
Receipts month of April, 1924		3999 "
Available Stock month of April, 1924	23660 "	118875 "
Shipments month of April, 1924	7244 "	54695 "
Inventory April 30, 1924	16501 "	64340 "
Receipts month of May, 1924	11119 "	69334 "
Available Stock month of May, 1924	27620 "	133674 "
Shipments month of May, 1924	8609 "	51051 "
Inventory May 31, 1924	19093 bbls.	82753 bbls.
Receipts month of June, 1924	27697 "	52790 "
Available stock month of June, 1924	46790 "	135543 "
Shipments month of June, 1924	4724 "	44087 "
Inventory June 30, 1924	16585 bbls.	91478 bbls.
Receipts month of July, 1924	5623 "	34685 "
Available stock month of July, 1924	22208 "	126163 "
Shipments month of July, 1924	14970 "	49675 "
Inventory July 31, 1924	7078 bbls.	76320 bbls.
Receipts month of August, 1924	11320 "	69064 "

	Fire-proof oil	Crown gasoline
Available stock month of August, 1924	18398 bbls.	145384 bbls.
Shipments month of August, 1924	7510 "	48929 "
Inventory August 31, 1924	10655 bbls.	96553 bbls.
Receipts month of September, 1924	....	....
Available stock month of September, 1924	10655 bbls.	96553 bbls.
Shipments month of September, 1924	8867 "	67408 "
[fol. 97] Inventory September 30, 1924	1838 bbls.	28650 bbls.
Receipts month of October, 1924	28798 "	90114 "
Available stock month of October, 1924	30636 "	118764 "
Shipments month of October, 1924	19612 "	55396 "
Inventory October 31, 1924	11037 bbls.	63309 bbls.
Receipts month of November, 1924	11243 "	36939 "
Available stock month of November, 1924	22280 "	100248 "
Shipments month of November, 1924	13416 "	54291 "
Inventory November 30, 1924	8852 bbls.	45726 bbls.
Receipts month of December, 1924	28477 "	142226 "
Available stock month of December, 1924	37329 "	187952 "
Shipments month of December, 1924	14121 "	59989 "

The Company has one warehouse at Tampa. There is a stock of oil in barrels delivered in trucks from the Tampa warehouse. And in this same warehouse are various grades

of lubricating oil, gasoline, pumps, heaters, candles and greases. When I refer to other grades of lubricating oil, I mean, for example, mobile oil packed in barrels. We receive them in barrels. We receive them from Rochester. The warehouse referred to is just a general warehouse for reserve supply. And the warehouse at Jacksonville is practically the same thing.

We have two stations at Jacksonville. One is called St. Johns River Terminal, where all of our storage tanks are located, and into which the boats discharge their cargoes; and then another station at Kings Road about two and a half miles from the other point. The gasolines that we receive are brought to St. Johns and pumped into the storage tanks and reloaded into tank cars and taken to Kings Road and dumped into tanks there and deliveries are made there and all barrel shipments are made from that point.

Cross-examination by Major Davis, counsel for defendant:

We have had the present arrangements, same as those we now have, with the Standard Oil Company of Louisiana for [fol. 98] the purchase of products for four or five years or maybe longer. We have no regular contract with the Standard Oil Company of Louisiana to furnish us as we need with the products which it provides. We do not buy all our refined oil and gasoline from the Standard Oil Company of Louisiana; but we do buy from them all that we use of these products in the State of Florida.

Their refineries are at Baton Rouge in the State of Louisiana.

There is no oil produced in Florida or in Georgia, so far as I know.

I have no monthly statement showing the incoming of ships into Port Tampa and Jacksonville to supply our oil needs, but I believe for the two ports in the year 1925 we received a total of about 89 ships, of which 38 came into Port Tampa and 51 to Jacksonville. I cannot say whether this is fairly typical of other years or not.

1925 was not typical especially as to the last six months. We did more business in 1925 than we did in 1924. For the first six months of 1925, our gasoline increased in the State of Florida about 20%, and for the last six months about

75%. Our increase by months for the year on gasoline averaged all the way from a gain of 14% to a gain of practically 100%.

Refined oil sales for the first six months of 1925, gained approximately 3%, the second six months of 1925 the gain was approximately 39%. For the first three months in 1925 we had losses on both. It was nine and three [illegible] February and March, but for the next four months there was a gain.

The 123 bulk stations which we have in Florida are at 123 different points scattered all over the State. A very large percentage of our shipments of gas go to our bulk stations. I should say it would exceed 90%.

A bulk station is a plant where we have storage tanks for certain grades, a pump house, side track facilities and delivery facilities. Our wagons operate out of these bulk stations in making deliveries to customers, but they are not service stations. All tank wagons are supplied from the bulk stations. We have some carload customers—tank car service. Most of our tank car shipments to customers we ship from Port Tampa and Jacksonville.

The tank car customers vary in number, but there are not many of them. Most people buy direct from the stations. We have certain grades of lubricating oil which we sell from the bulk stations.

Fuel oil is sold direct into cities and towns, largely towns in the Bone Valley District.

[fol. 99] This fuel oil is sold largely on contracts. Generally these contracts are made ahead of time with fuel oil customers and we supply them when they want it.

As to refined oil, I should say that 90% or more goes to the bulk stations.

At these bulk stations our agents keep a record, say weekly or daily, or whatever it may be, and then send in their report to our Jacksonville manager, and we regulate our supply according to the statements so shown. There will be times when we will probably have sufficient gasoline on hand at one of those bulk stations to last long enough, but we anticipate an increase in the price of gasoline at the primary points. We request under those conditions that our local bulk station tanks be filled to the limit regardless of the other tankage and relieve our storage at Port Tampa

and Jacksonville that much to enable us to bring in gasoline and other supplies. Market conditions vary depending on the price at the point of supply and on how much we have on hand.

None of these oils that go into Port Tampa are sold there. It is my understanding that it is all destined to other points in Florida.

When lubricating oil is brought into Port Tampa in a ship, it is pumped through pipe lines direct from the ship into cars—a whole trainload—and carried away.

Fuel oil goes into fuel tanks and then is repumped from the tank into tank cars. Very little fuel oil goes to bulk stations.

The explanation of the fact that in one of our orders to the Standard Oil Company of Louisiana we designated certain ships, the Waring and the Polarine, in which the oil was to be shipped, is that the Standard Oil Company of Louisiana advised us, after the return of those boats, that they were available for another trip. They do or they don't advise us, and in case they advise us it is available, we place our orders for refined oil and gasoline and a good many grades of lubricating oil, and we must know the ship, because there are other ships that cannot carry lubricating oil at all. Sometimes only one ship is available and sometimes more than one ship. Sometimes they are delivering to us from three boats and at other times from only one.

The oil we get from Mexico is brought from the Standard Oil Company of New Jersey. We do not charter the boat that brings it. It is brought by us at a price delivered. The only oil we get from there is a heavy fuel oil, and this oil is sold to various cities and towns and to manufacturing [fol. 100] industries down in the Bone Valley District.

The Court having asked "Where are those phosphate mines," Major Davis, counsel for defendant, answered "There is a number of them 60 miles southeast of Jacksonville. That entire section is filled with phosphate mines."

The witness resuming said:

The tank cars that we use down there are not owned by the Standard Oil Company of Kentucky. We have a contract with the Union Tank Car Line Co. for the use of them.

Some of our fuel oil customers furnish their own cars. The railroads have no tank cars.

Our agent at Port Tampa receives orders from our Jacksonville office, and I understand in certain cases the shipments are made direct to the customers. Upon general authority he can ship that way. Whereupon counsel for defendant asked the following question, to which the following answer was given:

"Q. The point I want to make is this that he sells no oil himself from Port Tampa?

A. It is simply an agency there."

As to the warehouse at Kings Road, we distribute from it to tank wagons and barrels. We do not ship in tank cars by railroad from there. Of the products we receive at the St. Johns River Terminal, we, except in cases of emergency, make shipments from the Jacksonville terminal, the St. Johns River Terminal. Our warehouse in Jacksonville is for distribution locally.

Re-examination by Mr. Middleton, counsel for plaintiff:

As to how long a product like gasoline, refined oil, or lubricating oil stays at Port Tampa or Jacksonville, this depends on the market condition in our business. But for the first six months of 1925, our average sales of refined oil and gasoline at Florida stations, supplied from those two terminal stations, approximated 110,000 barrels per month, whereas our tankage at Port Tampa and St. Johns River Terminals for the same two products were 327,000 barrels, representing approximately three months' supply based upon our business for the first six months in 1925. In other words, with business conditions as they were in the first six months of 1925, refined oil or gasoline could have stayed in those ports for three months. Of course time varies with the business transactions. It may move out pretty rapidly. At other times when business is slow, it does not move [fol. 101] rapidly. During boom times we sometimes run out of gasoline. And our tankage not only at Port Tampa and St. Johns River Terminal, but our bulk marketing sta-

tions, are not based, by any means, upon the business we did the last six months of the year. It was impossible to get additional tank capacity or do anything towards increasing our storage and delivery supply.

I did not mean to say in response to Major Davis' question that Kings station was only a local distributing station for Jacksonville. I understood him to refer to tank delivery. We barrel approximately 3,500 barrels per month, and ship out to I don't know how many points in Florida. It is a distributing station for deliveries. I understood him to say tank deliveries. It is a regular distributing station for certain products and it is not correct to call Kings Road a local distributing station. We ship stuff from Kings Road all over Florida. It also supplies Jacksonville by tank wagons.

ARTHUR M. STEPHENS

ARTHUR M. STEPHENS, called for the plaintiff, testified as follows:

My name is Arthur M. Stephens. I am at the present time Traffic Manager of the Standard Oil Company of Kentucky. I have held that position for three and a half years. I have a general knowledge of the rate situation in Florida.

Since June 15, 1923, the railroads, with the exception of the Florida East Coast Railroad, the Southern Railway Company and the Louisville & Nashville Railroad Company, are applying interstate rates on both carload and less than carload shipments from Jacksonville, Port Tampa and Tampa, Florida, to inland points in Florida. The Atlantic Coast Line Railroad is applying interstate rates.

I file herewith a copy of the contract between the Standard Oil Company of Kentucky and the Union Tank Car Line, marking same "Exhibit No. 6." It is as follows:

PLAINTIFF'S EXHIBIT No. 6

This Indenture, made and entered into this fifteenth day of September, one thousand nine hundred and seventeen,

Between Union Tank Line Company, a New Jersey Corporation, hereinafter called the Car Company, party of the first part, and Standard Oil Company (Kentucky) corpo- [fol. 102] ration, hereinafter called the Oil Company, party of the second part, Witnesseth:

Whereas, the Car Company owns a large number of tank cars which conform to the requirements of the laws of the various States and of the United States and are suitable for the transportation of crude petroleum oil and its various refinery products; and

Whereas, the Oil Company is in need of such equipment for the distribution of its oils and for the handling of other materials requiring tank car transportation:

Now, It Is Agreed, between the said parties as follows:

1. The Car Company, for and in consideration of the terms and conditions hereinafter set forth, agrees to lease and furnish and the Oil Company agrees to accept and use such tank cars of the Car Company as may be necessary for the transportation of the Oil Company's products.

2. The Oil Company agrees that its tracks at Savannah, Ga., Port Tampa, Fla., Jacksonville, Fla., Key West, Fla., Pensacola, Fla., Louisville, Ky., or any loading point hereafter established shall be considered Home Tracks for any part of the Car Company's equipments that said tracks may reasonably contain, without detriment to the Oil Company's business; and further agrees that the car company shall have free use thereof, i. e., the Oil Company agrees to give the Car Company, without charge, rights to the use of all the trackage, in and about the Oil Company's plants which shall be available without detriment to the Oil Company's business, for the Car Company's tank cars for any purpose whatsoever the same as though such trackage were owned by the Car Company. The Oil Company agrees to perform, or assume the expense of, all switching within or about its plants where such switching is occasioned by the natural operation of the plants or by instructions of the Car Company.

3. The Oil Company further agrees that it will inspect all cars placed for loading in order to comply with Interstate Commerce Commission regulations as to shipper's responsibilities.

4. The Car Company agrees to charge and the Oil Company agrees to pay the following amounts for the use of any and all of the Car Company's equipment so leased and furnished to the Oil Company under the terms of this contract:

A per diem charge for each day the car is under load of one and three-quarters (1¾) cents for each one hundred (100) gallons capacity thereof, figuring the capacity to the [fol. 103] nearest unit of one hundred (100) gallons, anything over fifty (50) gallons to be considered as one hundred (100) gallons; and in addition for each time the car is loaded a charge equal to three times the per diem for such car, except that the per diem and loading charges for a car of less than six thousand (6,000) gallons capacity shall be the same as for a car having a capacity of six thousand (6,000) gallons.

The per diem charge shall be computed from the day the loading of the car is begun until the day the unloading of the car is completed, including both days. No additional charge will be made for cars equipped with the heater pipes.

In case the Car Company furnishes any special type of car, special rates for such cars will be named.

The above charges shall apply to cars in road haul and in switching service, to cars used for storage or for any other purpose.

It is agreed that bills for the above charges shall be rendered monthly and shall be paid within thirty (30) days thereafter, in New York exchange.

It is further agreed that, in addition to the above charges to be received by the Car Company, any and all mileage allowed by the railroads under the Tariffs filed by them with the Interstate Commerce Commission shall be collected and retained by the Car Company.

It is agreed that any car prior to the time of its being placed or ordered placed for loading and after the time it is made empty shall be subject to the orders of the Car Company, and the Oil Company agrees to carry out instructions of the Car Company as to the movement of any such empty car.

6. Whereas, the Oil Company ships oils of various kinds, that is, Crude Oil, Fuel, Refined Oil, Gasoline, etc., and as

the movements of such oils vary in quantities, it is frequently necessary to use cars for one kind of oil that were previously loaded with another kind of oil; therefore, the oil company agrees, at its own expense and upon its own responsibility, to do all the cleaning of such cars as may be necessary so that the cars may be prepared for the handling of its business.

7. It is understood and agreed that as cars are required from time to time the Oil Company will give the Car Company prior notice thereof reasonably sufficient to enable the Car Company to assemble the cars required and order them forward to the Oil Company.

It is further understood and agreed that the Car Company shall not be responsible for failure to furnish cars [fol. 104] where, with due regard for the needs of all its lessees, it is unable to do so by reason of the limits of its total equipment, as then constituted, railroad car congestion, or any other matter beyond the Car Company's control, whether of a similar nature or otherwise.

8. The Oil Company agrees, without charge to the Car Company, to furnish any and all information and to do such things as may reasonably be required by the Car Company to facilitate car distribution, the movement of the cars and the keeping of a record of its equipment in relation to the Oil Company's business.

The Oil Company agrees to report dates of loading and unloading in connection with Section Four of this contract.

The Car Company may, at its option, secure from the Oil Company's consignee such information in relation to the Car Company's cars as it may require for the completion of its records.

It is agreed that in the event of the failure of the oil company to obtain and furnish the Car Company promptly the dates of unloading, the Car Company shall estimate the date of unloading and use such estimated date of unloading for the purpose of rendering bills for the use of the cars as provided in Section Four of this contract, subject to an adjustment if actual dates of unloading are subsequently furnished.

9. It is further agreed that the tracks of the Oil Company at its unloading stations, that is, points of destina-

tion, shall not be considered Home Tracks for the Car Company as in the case of the tracks at the Oil Company's shipping points, and that the Car Company's cars, both loaded and empty, at such points of destination shall be subject to railroad demurrage charges as provided for in the various railroad tariffs filed with the Interstate Commerce Commission, such demurrage charges, if any, to be chargeable to and paid by the Oil Company, or other consignees.

10. The Oil Company agrees not to let or sub-let any of the Car Company's cars while in the service of the Oil Company, without the Car Company's consent.

11. The Car Company agrees that the Oil Company shall not be held responsible for losses of cars covered by this lease or damage thereto occasioned by wrecks or otherwise while the cars are in the possession of the railroad transportation companies, but the Oil Company shall be responsible for all damage to the Car Company's equipment occurring while the cars are being switched or other- [fol. 105] wise handled by the Oil Company or are in its possession under load.

12. It is further agreed that the Car Company shall not be liable for any loss or damage to the contents of its cars.

13. It is agreed that this indenture shall continue in full force and effect from the date of its execution until cancelled by six (6) months' notice in writing to that effect given by mail by either party to the other, and at the expiration of said period of six (6) months from the date of mailing such notice, this indenture shall be and shall be considered cancelled and of no further force or effect.

14. This lease is made in New York and is to be interpreted according to the laws thereof.

In Witness Whereof, the parties hereto have caused these presents to be duly executed the day and year first above written.

Union Tank Line Company, by Wm. A. Barstow, Vice President. Attest: E. F. Cook, Secretary.

Standard Oil Company (Kentucky), by C. T. Collins, President. Attest: J. S. Steidle, Secretary.

The Atlantic Coast Line Railroad Company has no equipment for the handling of gasoline and refined oil in tanks. The Oil Company must get such equipment from other sources.

When a car of gasoline or refined oil is emptied at one of our bulk stations, our agent at the destination makes out a billing order upon the railroad to move the car as an empty to the original shipping point, consigning same to the Union Tank Car Company and not the Standard Oil Company. In other words, when a car is moved from the rails of the carrier as an empty, it is subject to the instructions of the Union Tank Car Company. The Standard Oil pays rental only when the cars are full.

It was agreed between counsel for plaintiff and defendant and the Court that at this hearing the parties would not go into the various shipments set out in the petition, but that that matter, to wit, the matter of accounting should be [fol. 106] held in abeyance pending a decision on the rate to be applied.

Upon movements from Port Tampa to Tampa of lubricating oil, the local transportation is subject to a switching charge that is applicable to both inter and intrastate traffic. When this lubricating oil reaches Tampa and is barreled and placed in the warehouse there and is then moved out of the warehouse, it carries the interstate rate, whether it moves out in carload lots or in less than carload lots. And the same thing is true of Jacksonville.

On Polarine oil moving from Port Tampa, to Tampa, the interstate rates are applied. On lubricating oils in cans, such as Polarine, that are warehoused in our warehouse at Tampa, when it moves out from Tampa, the interstate rate is applied. As to candles and stoves that have been in the warehouses, they apply the intrastate rate, and that sometimes moves in the same car with Polarine oil and other lubricating oil in barrels and cases. We may have a less than carload shipment made up of mixed products, Polarine oil, lubricating oil, candles and stoves, and apply the interstate rate to one class of commodity and the intrastate rate to the other commodity.

Cross-examination by Major Davis, counsel for defendant:

As to the rate from Port Tampa to Tampa, some call this a switching charge and some call it local transportation. The rate is a tariff rate.

It is ten or eleven miles from Port Tampa to Tampa. Port Tampa is not in the same switching district as Tampa. I am willing to be corrected in my statement that the transportation charge from Port Tampa to Tampa is a switching charge. Call it a local transportation charge.

Referring to Jacksonville, the charge for handling stuff from the St. Johns River Terminal to Jacksonville and from and to the Kings Road station at Jacksonville is a cross town movement, a switching charge, applicable to both interstate and intrastate traffic, and is not involved in this case.

William W. Zachary

William W. Zachary, called for the plaintiff, testified as follows:

I am District Manager of the Standard Oil Company in Florida, having headquarters at Jacksonville with charge of the State of Florida.

[fol. 107] Counsel for plaintiff asked the witness whether or not plaintiff paid local taxes on its products at Port Tampa and at Jacksonville, to which counsel for defendant objected, but the Court overruled the objection and allowed the witness to answer. He thereupon stated that the Company did pay taxes on its supplies both at Jacksonville and at Port Tampa; that it listed for taxation the property it held in storage tanks. The witness then proceeded as follows:

There are six or seven men employed at Port Tampa. About the only equipment there besides the tanks are the pipe lines. There is no office there; only a telephone station.

The equipment at St. Johns River Terminal is very much the same and about the same number of men are employed there.

I understand the pipe lines at Jacksonville belong to the Standard Oil Company of Kentucky. We have a superintendent that attends to them. The oil is pumped out by the crew of the boat. Our man tells them in which tank to put the stuff. He has information about where to go.

As a sample of a fuel order contract which we make with our customers, I file a copy of one between the Standard Oil Company of Kentucky and the Phosphate Mining Company, marking same "Plaintiff's Exhibit No. 7." It is as follows:

PLAINTIFF'S EXHIBIT NO. 7

Mexican Fuel Oil

An Agreement made this 31st day of October 1924 between the Standard Oil Company, a corporation organized and existing by virtue of the laws of the State of Kentucky (Jacksonville, Fla. Office) hereinafter called the Seller and the Florida Phosphate & Mining Corporation, Bartow, Fla. (main office Norfolk, Va.) hereinafter called the Buyer whereby the Seller agrees to sell to the Buyer and the Buyer agrees to buy from the Seller 50,000 barrels of Mexican fuel oil for delivery during the period of 12 months from November 15, 1924 at a price of one dollar and thirty five cents ($1.35) per barrel of 42 U. S. Standard gallons, in tank cars, f. o. b. Port Tampa, Florida.

It is further understood and agreed as follows:

1. The oil is to be used exclusively in the plant of the Buyer at Royster, Fla. and must not be resold by the Buyer.

2. Buyer shall order and receive the oil at the rate of approximately 4,000 barrels per month from November 15, [fol. 108] 1924 to November 14, 1925, both inclusive. If Buyer does not take all the oil it is entitled to in any one month then Seller is not obligated to deliver the amount not taken at any future time.

3. That in cases of fires, strikes, or other unavoidable causes on account of which the works of the Buyer covered by this contract are shut down, either in whole or in part, at any time during the life of this agreement, then the Buyer shall not be required to take any more oil for fuel at its works than is absolutely necessary during such stop-

page, after the Seller has received notice of the shutting down or partial shutting down of Buyer's plant for causes herein specified, such oil as Buyer does require shall be taken under this contract.

All orders will be filled with reasonable promptness, but fires, strikes, inability of the Seller to secure from its suppliers at regular intervals deliveries in proportion to quantities of oil purchased from their suppliers or transport the product covered by this agreement, or any other cause beyond its control, shall excuse the Seller from making deliveries or fulfilling this contract.

4. Buyer shall *apy* any import tax if one shall hereafter be imposed by the United States.

5. Should there be any increase in taxes imposed *by* on oil by the Mexican Government over and above 19 cents per barrel, the amount of the present tax, such increase shall be paid by Buyer on all deliveries under this contract. Should there be a decline below 19 cents per barrel Buyer is to receive benefit of same.

6. It is agreed that if the Buyer shall hold tank cars beyond the railroad free time allowance therefor, Buyer will assume all proper demurrage charges and in addition thereto will reimburse Seller for such tank car rental as it is obliged to pay the owners of such cars for the period in excess of railroad free time allowance during which the cars may be detained.

7. Payment for all oil delivered in each month shall be made not later than the tenth day of the succeeding month.

8. Should Buyer fail to comply with the terms of payment specified in this contract or its financial responsibility become impaired or unsatisfactory to Seller, cash payment or satisfactory security may be demanded and if refused Seller shall have the right to cancel this contract.

9. This contract cannot be sold, transferred or assigned without the written consent of the Seller.

[fol. 109] This contract is subject to the approval of an Officer, District Manager or Assistant District Manager of the Seller.

Standard Oil Company, by W. W. Zachary. Florida Phosphate & Mining Corp., by C. F. Burroughs, V. Pt.

The fuel oil goes to the Bone Valley District and a great deal of it goes down on the east coast around Orlando, and Lakeland, and Deland and the middle part of Florida. The rest of this is sold on contract before it comes into the State. Some of it is held subject to current demands. And there is no separation between the two classes. It all goes into the same tank and comes out of the same tank. When a carload comes in, we do not know where it is going or when it is going.

The deliveries under these contracts are very irregular. They are requirement contracts—very largely so treated by both seller and buyer.

They use this fuel oil to get the rock out, and the demand for the fertilizer depends on the conditions of the farms—somewhat uncertain. It is necessary for us to have a large storage in handling fuel oil. Our customers require it, and I have had same of them, when I was trying to negotiate contracts, ask how much storage facilities we have at our point of supply. They have to know that there is adequate storage.

Cross-examined by Major Davis:

At the bulk stations, we have tanks for storage of gasoline, and we have tanks for the storage of refined oil, and at some points we have storage tanks for lubricating oil, and we have warehouses and truck tanks used for delivery, and we have tank wagons for gasoline, and some for lubricating.

The number of men required depends on the service required—anywhere from 5 to 50.

The size of the bulk stations depends largely on the amount of business done there.

It is not true that we make all of our sales at the bulk stations. We make a lot of sales right in Jacksonville.

Everything that we sell in those towns we don't carry in our local stations, but a lot is shipped direct from Jacksonville to points where we have local stations. Sometimes an order is given to the local agent and he sends it in and [fol. 110] sometimes it is given to traveling salesmen and they send it in by a letter or telegram.

None of it is bought through Port Tampa or St. Johns River Terminal—no sales at all made there, or very little.

Our fuel oil contract calls for a certain amount of barrels per month to be shipped each month as long as the contract lasts. Those estimates vary considerably. But our custom is to be called on for a stipulated amount each month.

I do not think it would be possible to conduct the business we have in Florida without these storage tank facilities. You couldn't get enough cars to handle the contracts—we could not hold the cars. It would be entirely impracticable to try to do business without a large reserve storage.

We are a marketing company. We hold stuff in Florida ready to supply the demands of customers at all times, which demand varies from season to season and frequently in unexpected fashion. It may increase or fall off. We have to be prepared to take care of the demand. We were out at Jacksonville some time last year. And I do not think our tankage there is sufficiently large.

We are constantly getting in supplies of different kinds of Polarine oil, greases and other supplies which we carry in the warehouse at Tampa and Jacksonville. Some of these supplies stay in two or three months, and some longer. We have some that come in by railroad in barrels that stays in three months or maybe six months.

In barreling oil, we have a pipe line running from the storage tank and they put a barrel under a nozzle and fill the barrel. It is a mechanical apparatus.

I don't recall the size of our storage at Tampa or at Orlando. I do not carry those sizes in my head.

W. G. Violet Recalled

Mr. Violet resumed the stand and was interrogated by Major Davis, counsel for defendant, and testified as follows:

In explanation of some of the terms used in the exhibits heretofore filed, I will explain that "fire proof oil" is refined oil.

"Crown gasoline" means motor gasoline. "Crown" is just a trade name. We receive only one grade of gasoline by boat, and that is all that is involved in this case so far as gasoline is concerned.

[fol. 111] "Heavy fuel oil" is around 11 gravity such as we sell to the Phosphate Mines and railroads.

"Gas oil" is a lighter oil used mostly, or to a large extent, in internal combustion engines.

20.22 gravity oil is a somewhat ligher gravity of fuel oil.

We have Polarine and Medium Polarine and Heavy on this Port Tampa exhibit. Those oils come in vessels to Port Tampa.

There is nothing on Exhibit 4 that does not come through Port Tampa.

At this point the witness, still under examination by counsel for defendant, was examined and testified as follows:

"Q. I notice Exhibit 4 starts off by showing the inventory December 31st, 1924 gasoline 75,107 barrels and then you show the receipts for the month of January 45,662 barrels, total available 120,769 barrels and the shipments for the month of January 1925 58,406 barrels and the different between those two precedes the inventory for the next month does it not?

A. Not necessarily.

Q. Why not?

A. Because temperature conditions have a great deal to do with it.

Q. How much difference would there be in barrels?

A. I don't know except that gasoline would expand or contract about one per cent of its volume for each sixteen

to seventeen degrees variation in temperature. Another thing, the receipts at Port Tampa as we show there are based upon our purchases as indicated by those invoices at 65 degrees temperature.

Q. What I am trying to get at is this: The sum total of your inventory plus what we took in and less what we took out is that figure 58,406 barrels?

A. Yes, sir; but they are figured on a different basis.

Q. You start out the next month however with 62,285 barrels or 4,000 barrels more?

A. That is all right even eliminating the temperature proposition. We have to determine when these boats get in and the amount of stuff we take before and after the boats get in. There will always be a variation. We show [fol. 112] the receipts for January, 1925 45,662 barrels of gasoline. We paid for that much and we received that much reduced to a 65 degree temperature basis. The shipments at Port Tampa and our inventory at Port Tampa were based upon measurements regardless of temperature and sometimes there is as high as eighty-five or ninety degrees of temperature.

Q. What I could not understand is this that in January you show a balance of the inventory 58,406 barrels and on the 1st of February you sold 62,285 and that is 4,000 barrels more than it should be and yet the next month you show that you had 49,948 and you carry forward 46,385 or approximately 3,000 barrels less, 4,000 barrels more in the first month and 3,000 barrels less in the second month?

A. I shall have to investigate that. I cannot determine now why that should be even with the temperature and other conditions—it must be the difference in the temperature. The inventory is made regardless of temperature and the shipments regardless of temperature but the receipts indicating the amount we paid for are at 65 degrees temperature.

Q. What is the approximate temperature at Port Tampa in January and February?

A. Pretty warm down there.

Mr. Middleton: I don't know that this witness can determine that.

The Court: I think we had better have the advertising about the temperature of Florida from some real estate fellow down there.

Q. Was that the case in refined oil?

A. On the same basis. Refined oil and gasoline are purchased on a 65 degree temperature basis.

Q. How about heavy oil—fuel oil?

A. 63 degrees.

Q. Does that make a difference?

A. Yes, sir; on heavy the variation is one per cent for approximately 25 degrees.

Q. Does it run up or down?

A. Both ways depending on the temperature.

Q. Would that explain the difference of 2,000 or 3,000 barrels in the statement?

A. Absolutely.

Q. Polarine oil in Exhibit 4 you show Port Tampa, Florida and Tampa. Explain that exhibit please?

A. This statement shows a combination of Tampa and Port Tampa necessarily on the face of it because we [fol. 113] separate December 31st and preceding months in 1925 in the inventory and we have no tankage for lubricating oil at Port Tampa.

Q. It is different at Jacksonville you have tankage there?

A. Yes, sir; we have now.

Q. By Mr. Middleton: Since the middle of the year?

A. Since September or October, 1925. That is approximate, I don't know exactly but we didn't have it for the entire year 1925—not for the entire year of 1925 did we have the St. Johns River Terminal.

The plaintiff rested.

J. W. Morris

J. W. Morris was called as a witness for the defendant, and, being examined by Major Davis, counsel for defendant, testified as follows:

I live in Tampa, Florida, and am the general agent of the Atlantic Coast Line Railroad Company at Port Tampa, Florida; having been such for twenty-two years. As such

general agent, I have charge of the terminals at Port Tampa and the Atlantic Coast Line property there. I handle the shipping in and out, except where commodities or vessels are represented by particular agents of the owners.

I am quite familiar with the methods of Oil Companies at Port Tampa and in a general way I know what is done at Tampa.

The Standard Oil Company, the Gulf Refining Company and the Seaboard Oil Company, are all located at Port Tampa. They are in active business now. The National Petroleum Corporation is also located there, though at the present time it has suspended operations.

The Mexican Petroleum Company and the Texas Oil Company have yards at Tampa.

The Gulf Refining Company brings its products into Port Tampa in tank ships owned by the Gulf Refining Company. The products of these other Oil Companies are distributed in absolutely the same way as the Standard of Kentucky distributes.

The Gulf Refining Company has its own refinery at the Port there, but gets its fuel oil from Tampico, Mexico. It [fol. 114] brings its own products on its own ships to Port Tampa and places it in its own tanks. The method of handling from that point is exactly the same as done by the Standard Oil of Kentucky there.

The flow of oil through the tanks is practically continuous. They are loading tank cars through the receiving tanks continuously throughout every day in the year, except some Sundays. The Standard Oil Company does not do that on every Sunday; but it is practically continuous from the tanks. Frequently oil is coming out of the tanks at the same time that it is being pumped into them by the ship.

The ships pump the oil. I do not know who pays for the pumping. The Standard Oil Company pays me the wharfage, which charge is for the products passing over the wharf and includes the berth to accommodate the ship and wharfage over which it passes.

The oil passes over the wharf in pipe lines. When the steamer ties up in the wharf, the Standard Oil Company places its men there and they commence pumping immediately from the pipe line to the receiving tank.

STATEMENT OF PETROLEUM PRODUCTS RECEIVED BY V
PRODUCTS FORWARDED IN TANK C

	GASOLINE				
	Received	FORWARDED Cars	Barges	Total	Received
1923					
June	11,311,978	.....	571,309	.....	1,199,688
July	9,525,424	.....	304,366	.....	3,593,621
August	.....	.....	597,089	.....	.....
September	5,984,748	.....	473,002	.....	2,168,259
October	16,190,143	.....	766,814	.....	3,638,250
November	19,408,435	.....	721,439	.....	10,747,044
December	11,436,440	.....	1,136,507	.....	3,544,860
TOTALS	73,857,168	.....	4,570,526	.....	24,891,722
1924					
January	8,902,555	11,047,212	1,420,709	12,467,921	1,830,074
February	9,691,744	11,903,383	1,284,522	13,187,905	4,643,931
March	8,346,215	10,427,475	1,408,361	11,835,836	4,933,328
April	22,815,210	10,589,736	1,070,718	11,660,454	6,217,595
May	9,495,486	11,088,270	845,585	11,933,855	4,653,911
June	9,487,434	9,317,506	833,527	10,151,033	7,991,835
July	7,248,252	9,859,220	1,001,999	10,861,219	.....
August	11,331,672	9,564,885	664,844	10,229,729	2450,862
September	93,082	11,856,211	945,945	12,802,156	7,720,547
October	20,498,148	10,635,963	1,488,023	12,123,986	6,682,461
November	10,778,658	11,513,937	1,418,274	12,932,211	5,811,146
December	26,020,236	13,543,323	2,071,694	15,615,017	7,050,860
TOTAL	144,708,692	131,347,121	14,454,201	145,801,322	59,986,550

DEFENDANT'S EXHIBIT No. 1.

BY VESSEL AND PUMPED THEREFROM TO PLANT OF STANDARD OIL COMPANY PORT TAMPA, FLA., AND ALSO PETROLEUM
NK CARS FROM PORT TAMPA AND PUMPED INTO BARGES AT PORT TAMPA BY STANDARD OIL COMPANY
FROM JUNE, 1923 TO DECEMBER, 1925, INCLUSIVE.

REFINED OIL FORWARDED				LUBRICATING OIL FORWARDED				FUEL OIL FORWARDED				ALL PETROLEUM PRODUCTS FORWARDED			
eived	Cars	Barges	Total	Received	Cars	Barges	Total	Received	Cars	Barges	Total	Received	Cars	Barges	Total
99,688	.....	67,914	.....	220,374	.....	.....	.....	14,369,527	.....	.....	.....	27,101,567	14,654,206	639,223	15,293,429
98,621	.....	56,272	.....	347,886	.....	.....	.....	.....	.....	23,621	.....	13,466,931	25,836,598	384,259	26,220,857
.....	.....	73,735	.....	.....	.....	.....	.....	14,825,836	.....	.....	.....	14,825,836	30,741,157	670,824	31,411,981
68,259	.....	112,543	.....	263,340	.....	.....	.....	14,760,826	.....	.....	.....	23,177,173	31,870,524	585,545	32,456,069
88,250	.....	150,751	.....	400,554	.....	.....	.....	1,698,211	.....	.....	.....	21,927,158	37,039,938	917,565	37,957,503
47,044	.....	112,622	.....	345,114	.....	.....	.....	14,879,239	.....	.....	.....	45,379,832	38,230,388	834,061	39,064,449
44,860	.....	168,815	.....	319,889	.....	.....	.....	14,353,055	.....	.....	.....	29,654,244	43,804,229	1,305,322	45,109,551
91,722	.....	742,652	.....	1,897,157	.....	.....	.....	74,886,694	.....	23,621	.....	175,532,741	222,177,040	5,336,799	227,513,839
30,074	2,880,446	225,232	3,105,678	528,066	739,791	.....	739,791	1,494,016	12,833,074	.....	12,833,074	12,754,711	27,500,523	1,645,941	29,146,464
43,931	3,616,950	225,265	3,842,215	357,034	271,392	.....	271,392	43,922,301	25,534,226	.....	25,534,226	58,615,010	41,325,951	1,509,787	42,835,738
33,328	2,666,022	168,960	2,834,982	.....	40,425	.....	40,425	27,374,876	23,801,531	.....	23,801,531	40,654,419	36,935,453	1,577,321	38,512,774
17,595	1,998,781	169,303	2,168,084	821,621	555,632	.....	555,632	12,571,268	22,131,082	.....	22,131,082	42,425,694	35,275,231	1,240,021	36,515,252
53,911	2,196,254	56,350	2,252,604	231,125	535,880	.....	535,880	12,692,776	24,326,897	.....	24,326,897	27,073,298	38,147,301	901,935	39,049,236
91,835	2,090,962	320,301	2,411,263	235,343	204,698	.....	204,698	30,216,938	18,886,947	.....	18,886,947	47,931,550	30,500,113	1,153,828	31,653,941
.....	1,532,218	72,491	1,604,709	.....	133,484	.....	133,484	14,618,182	27,111,909	.....	27,111,909	21,866,434	38,636,831	1,074,490	39,711,321
50,862	1,799,675	73,326	1,873,001	528,066	653,702	.....	653,702	14,479,876	22,739,355	715,735	23,455,090	28,790,476	34,757,617	1,453,905	36,211,522
20,547	1,949,386	186,199	2,135,585	393,070	329,788	.....	329,788	15,747,293	21,362,426	694,172	22,056,598	23,953,992	35,497,811	1,826,316	37,324,127
82,461	2,627,558	228,367	2,855,925	1,373,249	887,704	.....	887,704	23,785,243	24,077,751	372,383	24,450,140	52,339,101	38,228,982	2,088,773	40,317,755
11,146	3,358,365	297,944	3,656,309	623,146	760,637	.....	760,637	27,527,822	26,106,739	672,734	26,779,473	44,740,772	41,739,678	2,388,952	44,128,630
50,860	3,137,867	295,680	3,433,547	649,203	475,344	.....	475,344	32,653,316	31,312,575	316,809	31,629,384	66,373,615	48,469,109	2,684,183	51,153,292
86,550	29,854,484	2,319,418	32,173,902	5,739,923	5,588,477	.....	5,588,477	257,083,907	280,224,518	2,771,833	282,996,351	467,519,072	447,014,600	19,545,452	466,560,052

I file herewith, as "Defendant's Exhibit No. 1," a statement which shows the oil products of the Standard Oil Company of Kentucky received at Port Tampa from June 1, 1923 to December 31, 1924, a statement made up from the defendant's original record. It is as follows:

(Here follows Defendant's Exhibit No. 1, marked side folio page 115)

[fol. 116] Cross-examination by Mr. Middleton:

The Railroad Company has nothing to do with the unloading of the boats that bring the Standard Oil Company supplies into Port Tampa.

The Standard Oil Company does not own the property upon which the tanks are located. This is leased from the defendant, Atlantic Railroad Company.

The wharfage charge I have spoken of is not the rental charge under that lease. It is a charge collected by our Company.

There is a switch between our Company and the Standard through the yards for some distance and over the wharf. They pay us a regular rental for the tank space which is different from the wharfage. The Standard owns the pipe lines They pay a wharfage charge at one-half cent a barrel on 42 gallons.

The Gulf Refining Company gets its gasoline and oil from Port Arthur and its crude oil from Tampico. All of the refined oil comes from Port Arthur.

The Gulf Refining Company has just about the same number of steamers coming in to Port Tampa as does the Standard Oil Company, towit, about three or four per month. They do practically the same amount of business—very close to it.

The Standard Oil Company has in some months only two steamers coming in and some months four, and I suppose they might have five but probably not more than five.

The time when oil and gasoline are being pumped from the boat into a tank and from the tank into tank cars simultaneously is possibly one-third of the time. Some of the ships take longer to pump than others. Some last two or three days and some others can be pumped out in one day.

If they have two a month and it took a day to pump each one, there would be two days. There is no stoppage of shipping out from the tank into tank cars on account of pumping in. They are pumping in and shipping out at the same time, whenever a boat happens to be there and they happen to be loading tank cars.

Attention of the witness was called by counsel for plaintiff to the fact that in a lease from the Atlantic Coast Line Company and the Atlantic Land & Improvement Company to the Standard Oil Company, there is this provision: "The lessee, the Standard Oil Company, shall pay the lessor a further consideration for the privilege herein granted in addition to the rental of $537.00 hereinbefore provided, [fol. 117] etc.", to which the witness responded:

I told you the wharfage was separate. It may be a part of the lease, but the rental of the land does not cover the wharfage. The wharfage is governed by the regular tariff rates filed with the Interstate Commerce Commission.

The Gulf Refining Company and the Seaboard Oil Company have oil stations all over Florida, and they issue to their bulk stations.

There is no consumption of oil at Port Tampa. And there is no oil produced in Florida.

The Gulf Refining Company owns refineries at Port Arthur.

Both sides here rested. And this is all the evidence that was introduced upon the trial.

JUDGE'S CERTIFICATE TO STATEMENT OF EVIDENCE

The foregoing statement of the evidence heard upon the trial of the above styled cause is hereby approved.

Chas. I. Dawson, Judge.

No exceptions. Chas. G. Middleton, Solicitor for complainant.

July 8-26.

IN UNITED STATES DISTRICT COURT

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed July 8, 1926

The Clerk will copy for the record on appeal herein the following parts of the record herein, viz.:

1. Bill of complaint.
2. Motion for injunction July 7, 1925.
3. Motion to dismiss July 7, 1925.
4. Order of July 7, 1925.
5. Order overruling motions January 5, 1926.
6. Answer, with date of filing.
7. Opinion filed June 10, 1926.
8. Final decree entered June 25, 1926.

[fol. 118] 9. Order of June 25, 1926, filing assignment of errors, allowing appeal, waiving citation, suspending decree, fixing amount of bond, filing and approving bond.

10. Assignment of errors.
11. Bond.
12. Statement of evidence and order approving and filing same.
13. This præcipe and endorsement by attorney for plaintiff.

Helm Bruce, Bruce & Bullitt, Solicitors for Defendant and Appellant.

Appellee (or plaintiff) does not desire any additional portions of the record copied.

Chas. G. Middleton, Humphrey, Crawford & Middleton, Solicitors for Plaintiff and Appellee.

Clerk's certificate to foregoing transcript omitted in printing.

[fol 119] In the United States Circuit Court of Appeals for the Sixth Circuit

Appearance of counsel, filed July 14, 1926, omitted in printing.

Motion to Advance—Filed October 2, 1926

Appellant moves the Court to advance the above entitled cause for hearing, as a cause taking precedure in this Court under the Judicial Code § 129 as amended by the Act of February 3, 1925, and to set the same for hearing at the beginning of the November session of the Court.

Thos. W. Davis, Helm Bruce, Counsel for Appellant.

Notice of the foregoing motion to be made at the opening of the October Term of Court is hereby accepted and concurred in as to request for advancement.

Chas. G. Middleton, Counsel for Appellee.

October 1, 1926.

[fol. 120] In United States Circuit Court of Appeals

Order Advancing Cause—Filed October 7, 1926

This cause is advanced for hearing and assigned for argument at the November session.

Minute entry of argument and submission November 9, 1926, omitted in printing.

In United States Circuit Court of Appeals

Decree—Filed December 17, 1926

Appeal from the District Court of the United States for the Western District of Kentucky.

This cause came on to be heard on the transcript of the record from the District Court of the United States

for the Western District of Kentucky, and was argued by counsel.

On Consideration Whereof, it is now here ordered adjudged and decreed by this Court that the decree of the said District Court in this cause be and the same is hereby modified as indicated in the opinion of this Court and the cause is remanded to the Court below for the entry of such modified decree and for further proceedings in accordance therewith. Appellant will recover the costs of this Court.

[fol. 121] In United States Circuit Court of Appeals

Before Denison and Moorman, Circuit Judges, and Hough, District Judge

Opinion—Filed December 17, 1926

Denison, Circuit Judge:

The Standard Oil Company of Kentucky (hereafter called the "Company"), sells oil throughout Florida. It is not a producer. It buys its fuel oil from Tampico, Mexico, and its gasoline, kerosene and lubricating oils from Baton Rouge, Louisiana. These oils are shipped from the point of purchase to Florida by boat across or along the Gulf of Mexico. These interstate or foreign shipments enter Florida at two points,—Port Tampa, about eight miles from the city of Tampa, and the St. John's River Terminal, in the city of Jacksonville. At each of these points the company maintains a group of large tanks, severally used for the different kinds of oil, and into which the oil is pumped from the tank steamers which bring it in. From these tanks the oil is pumped out into the tank cars in which it is shipped to various interior points. Sometimes oil is flowing into and out of the storage tanks,—from steamers to car,—simultaneously; sometimes some oil is held in the tanks as long as sixty days. The question in this case is whether this further shipment, from Port Tampa or Jacksonville to the interior points of consumption or of secondary distribution, continues to be that interstate or foreign commerce in the

course of which the oil comes in, or is predominantly local commerce, and in its nature intrastate. The question arises in this way. The Florida Railroad Commission has fixed rates for the intrastate shipment of these various oils from Port Tampa and Jacksonville to the interior points. The Atlantic Coast Line Railroad Company (hereafter called the "Railway") filed with the Interstate Commerce Commission its proposed rates for these same items of transportation upon the theory that they were interstate or foreign commerce; and there being no objection these rates became, in effect, established by the Interstate Commerce Commission, and properly applicable for all items of transportation that were within the jurisdiction of that [fol. 122] Commission. Thereupon the Company filed a bill in the Court below to enjoin the Railway from continuing to collect these interstate rates, to compel an accounting from the Railway and for a refund of such of these rates as had been received in excess of the Florida domestic schedule. The jurisdiction of the Court below sufficiently rested upon the diverse citizenship of the parties. A decree was made in favor of the Company and the Railway appeals. It is not necessary to decide whether the decree was interlocutory or final; either theory sufficiently sustains the appeal.

We consider, first, the situation at Port Tampa; and severally with regard to the four kinds of oil, the status of which is not necessarily the same,—though all four have two characteristics in common. All enter from outside the state and all are intended for further common carrier shipments,—none for use at Port Tampa.

First, of fuel oil. This is substantially all sold by the Company to various manufacturers,—the ultimate users,—upon annual contracts to supply them with stated quantities or with their needs during the period.[1] The incoming stream from Mexico is brought into the tanks rapidly enough to supply the outgoing demand,—generally in accordance with the predetermined fixed amounts, but

[1] Ninety-five per cent is so sold. That five per cent is sold later may be disregarded, not because five per cent is a negligible fraction (that we do not decide) but because the five per cent was also always destined for further shipment and the ninety-five per cent stamps the whole mass as not intended for miscellaneous public sale, here, there or anywhere.

somewhat varied by the developing fluctuations in that demand. In our judgment this oil travels on a substantially continuous trip from Tampico to the interior points in Florida, and the Port Tampa tanks are a pond or equalizing reservoir which merely accommodates the supply to the outgo and which furnishes essentially nothing but storage in transit.

Upon the question whether, for rate control purposes, commerce is interstate or intrastate, the decisions of the Supreme Court furnish no universal rule; each case has been decided on its facts. The Sabine-Tram case (Texas Co. v. Sabine Tram Co., 227 U. S. 111), is an application of the principle which we think now controlling, and an application which is not easy to distinguish from the [fol. 123] present case. It declares that domestic gathering together of property for the purpose of foreign shipment and sale, must be treated only as an incident of the entire transaction and takes the character of the whole. The flow of commerce in the present case is in the opposite direction, but the principle seems to be wholly analogous. It is suggested that there is distinction in the fact that there the gathering together was only a preparatory incident of the contemplated foreign shipments and sale, while here the contemplated distribution and sale in Florida make up the primary object involved and the bringing in from the outside is the preparatory incident; but we can see no sufficient reason for saying that either part of such transaction is primary and the other incidental. As Justice Holmes said in Davis v. Virginia, 236 U. S. 697, 699, "From the point of view of commerce, the business is one affair." It is as accurate to say that the local distribution in Florida was merely in aid of the Tampico purchase and to provide an outlet for the Mexican wells, as to say the converse; probably neither way of putting it is complete.

We can not say that the mere power of the Company to make a diversion at Port Tampa, or to use the oil there or in the immediate vicinity without any substantial further transportation, furnishes any reason for distinguishing from the Sabine-Tram case; for there Powell and Company had full power and right to send shiploads of the collected lumber up and down the Texas coast instead of sending it across the ocean. We take the controlling thought of

the Sabine-Tram case to be that where there is, both in expectancy and in fact, a clear and established stream of foreign commerce, the intent of the one engaged in that commerce that the items destined therefor are to be considered a part thereof from their origin to their destination, is the thing which stamps the whole transaction as foreign commerce; and this reasoning applies as well to the branches of the tree through which the sap is distributed after passing up the trunk, as to the roots in which it is made ready for the upward passage.

That this intent to make a continuous interstate shipment is the determinative thing, is illustrated by B. & O. Ry. Co. [fol. 124] v. Settle, 260 U. S. 166. The initial trip terminated at Oakley; Settle there took possession of the car and had power to sell it locally, or to reship it as he pleased; but his intent from the beginning had been that the journey should continue to Madisonville, with a temporary stop at Oakley merely long enough to make arrangements for forwarding. When this constant intent was observed, it was thought that the stop at Oakley, and possession there by Settle, and reshipment from there did not interrupt the continuity of the journey. The parallel with the present case seems perfect. Settle's motive, to get a lower rate, can not be the basis of the decision. This motive was lawful, if the law permitted him to tack these two rates. His intent to make a really through shipment, not his reason for this intent, was the vital thing.

Here, the identity of the oil which goes into the tank with that which goes out is not lost. The oil is fungible, each gallon is equal to any other gallon. If 100 barrels were billed from Tampico to the user at an interior point, no one would think that a holding of it on the way in this storage tank for a reasonable time until the user was ready for it, would effect its character as a through shipment. To this view it does not seem material that the users, instead of one concern, are a known and small group, among whom it is from the beginning intended that the shipment should be distributed.

The Stock Yards case (Stafford v. Wallace, 258 U. S. 495) is not a rate case, but the sole question was whether the interstate transportation was finished, so as to end the federal power of supervision. It furnishes another application of the same principle,—that the intent controls.

As to the cattle coming to Chicago from the West, no particular cattle have any particular final destination; it is merely well understood that the mass is to be rearranged and all the items are to travel on somewhere. The ever-present expectation and intent that the cattle are to continue their journey, and that their delay and rearrangement at the stock yards will only make a temporary stop, maintain the interstate character of the commerce throughout this stoppage. Indeed, there is close analogy in the situations. The stock yards, like the storage tanks, have a [fol. 125] limited capacity. They can not overflow, they must not run dry. The stream runs through them.

Adopting the criterion declared in these three cases, as we understand them, we must conclude that the rates given in the schedule approved by the Interstate Commerce Commission are the rates properly applicable to the shipments of fuel oil from Port Tampa to the interior. In addition to these cases, see Southern Pacific v. I. C. C., 219 U. S. 498; Peoples Co. v. Public Service Commission, 270 U. S. 550.

With regard to gasoline and kerosene shipments through Port Tampa, we conclude they must be classified with the fuel oil. The situation is the same with one exception; and this exception, we think, make the case stronger for the interstate theory. The shipments onward from Port Tampa are all to the so-called bulk stations which are maintained by the Company at different interior points. There is therefore from the beginning of the shipment at Baton Rouge, the intent and purpose that the gasoline and kerosene shall all be distributed through Port Tampa to these bulk stations. There is not to be, as with the fuel oil, a distribution among a number of users; the shipments all go to the same consignee, according to its needs in different localities; and since the original purchaser and ultimate consignee are the same person, there is constant community of intent.

It is true that the Port Tampa tanks are filled up when a price advance is anticipated and are allowed to run low when the market prospect is poor; but doubtless so are the bulk station tanks. It is the latter, not the former, which are the Company's points of distribution for public sale. That these intermediate reservoirs adapt themselves to the demand at the end of the contemplated interstate jour-

ney has no tendency to show that there are two successive and separate journeys.

We do not intend to say that these oils,—fuel, gasoline and kerosene,—may not be subject to state taxation at Port Tampa; that question is not involved. The right of the state to tax is affected by some considerations which are less applicable to rate regulation; and the concurrence [fol. 126] in the state of the right to tax and the right to fix transportation rates is not inevitable. (Hanley v. Kansas City Co., 187 U. S. 617, 621; Binderup v. Pathe Exchange, 263 U. S. 291, 311.)

As to these oils so far considered, the title does not pass from the producer to the Company until they are delivered into the Company's tanks at the port of entry; but the passage of title was likewise so delayed as to the cattle in the Stock Yards case and as to the gas in the People's Co. case, supra. Hence, we can not consider this fact as controlling,—if important.

The lubricating oils received at Port Tampa are differently treated and present another question. True, they are mostly shipped along from Port Tampa to Tampa; but that haul is very short and we do not know that any question is made about that rate. At Port Tampa it is pumped directly from the steamers into the tank cars, which go mostly to Tampa. At the Tampa warehouse it is pumped from the tank cars into storage tanks, and then at convenience is put into tank wagons or into barrels or some other small containers in which it is partly sold to the general public and partly sent along to the local filling stations maintained by the Company. If any of it goes in bulk from Tampa to the bulk stations, that does not appear, and would not be controlling in any event. An unstated but small fraction goes in the tank cars directly from Port Tampa to the bulk stations, but, for the reasons to be stated with regard to Jacksonville, this fraction can not be deemed to make a continuous through journey. As to all lubricating oil rehandled at Tampa, we find that by this second halt and handling within the state, by its substantial change of form for future shipment, and by its devotion in its new form, in large part if not wholly, to general public distribution and sale, it loses its status as material in the course of interstate transportation and takes on a predominantly local character. The authorities relied upon by the Com-

pany apply to this transaction, and the differences between the handling of the fuel oil and the treatment of the lubricating oil well illustrate the distinction between what continues to be and what ceases to be interstate traffic. (Pa. Ry. Co. v. Knight, 192 U. S. 21; Chicago, etc., Co. v. Iowa, [fol. 127] 233 U. S. 334; Arkadelphia Co. v. St. Louis, etc., Co., 249 U. S. 134; Southern Pacific v. Arizona, 249 U. S. 472, and Missouri v. Kansas Co., 265 U. S. 298.) The rates established by the Florida Commission are the ones properly applicable to lubricating oil shipments from Port Tampa to the interior and from Tampa to points beyond.

At Jacksonville the situation as to lubricating oils is the same as at Port Tampa and Tampa, except that there seems to be no intermediate haul by a common carrier between the river terminal and the city warehouse.

As to gasoline and kerosene, the proof is that 13% of the amount received into the tanks is used locally at Jacksonville and never gets any further shipment. 13% is a very substantial fraction; it cannot be regarded as negligible. It follows that as to any particular unit of oil coming into the tanks, it cannot be said that there was always an intent for further transportation and for merely temporary stoppage. The one causing the original shipment knew, and therefore intended, that this particular gallon or barrel, or 100 barrels, might stop at Jacksonville or might go on. This uncertainty is inconsistent with that clear intent which, and which only, can carry the original character along into the second stage of the interrupted shipment. If, in the Sabine-Tram case, Powell had been, out of his assembled stock, sending substantial shipments to Texas points, or if Settle, in his case, had been supplying a substantial local demand at Oakley, and sending along to Madisonville what was left,—though much the greater fraction,—the results in those cases seemingly must have been different. We think that the gasoline and the kerosene, like the lubricating oils, should take the local rates from Jacksonville to other Florida points.

As to the Jacksonville fuel oil, the record is obscure and not sufficient for satisfactory determination. If substantially all of it goes forward to other points pursuant to an established and known course of business, it is to be treated like the Port Tampa fuel oil; if according to the

established methods and experience, a substantial part of it ends its journey at Jacksonville, it is to be treated like the other oils at Jacksonville. The parties should pro- [fol. 128] duce further proofs on this point in the Court below. We have no occasion now to deny that the fraction of fuel oil stopping at Jacksonville may be so small that it may be wholly disregarded in determining the through character of this commerce; nor is there necessity for attempting now to decide how small that fraction must be to be so disregarded. If that question arises upon the further proofs, the Court below will decide it.

The recent decisions of the Florida Supreme Court (Florida R. R. Commission v. Atlantic Coast Line and Seaboard Air Line) seem to have been dependent upon a question of pleading; and by the pleadings as construed, the facts that we have thought controlling as to the Port Tampa fuel oil, gasoline and kerosene, were not presented. In Atlantic Coast Line v. Standard Oil, C. C. A. 4, 12 Fed. (2nd) 541, it did not appear that these same controlling facts existed as to Wilmington. Hence, in so far as we reach a result different from that announced in that case, there is no necessary conflict with that Court in our views of the legal principles involved.

The decree below allows interest upon each excess payment from its date. This is in accord with the analogous practice of the Interstate Commerce Commission (in a more doubtful situation) approved by the Supreme Court in Louisville, etc., Co. v. Schloss-Sheffield Co., 269 U. S. 217, 268. The same rule is appropriate to a court recovery.

The decree will be in part affirmed and in part modified as indicated in this opinion, and the case is remanded to the Court below for the entry of such modified decree and for further proceedings in accordance therewith.

Appellant will recover the costs of this court.

[fol. 129] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 130] SUPREME COURT OF THE UNITED STATES

No. 872

ORDER ALLOWING CERTIORARI—Filed March 21, 1927

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 131] SUPREME COURT OF THE UNITED STATES

No. 873

ORDER ALLOWING CERTIORARI—Filed March 21, 1927

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.